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U.S. Courts

FEDERAL ANTI-TRUST DECISIONS

INDEX-DIGEST

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WITH

TABLES OF REPORTED AND CITED CASES

INCLUDING ALSO

AN APPENDIX

CONTAINING

THE FEDERAL ANTI-TRUST LAWS

Prepared by

JOHN L. LOTT

and

ROGER SHALE

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- 22. Private Party to Maintain Suit to Restrain, under Sherman Law, must have been direct object of Unlawful Agreement.**—The carrying out of an agreement in violation of the Sherman Law, or otherwise in restraint of trade, will not be enjoined at the suit of a private party, not shown to have been the direct object of such agreement or to have suffered special damages. *Paine Lumber Co. v. Neal*, 214 F., 83. 5—446
- 23. Private Party may not Maintain Action to Enforce the Sherman Law, unless he can show a Special Damage to Himself.**—A private individual may not maintain an action to enforce generally the provisions of the Sherman Law; but, in order to rely upon its provisions, an individual must base his cause of action upon its violation, and show a special damage to himself arising from such violation not suffered by the general public. *Union Pacific Railroad Co. v. Frank*, 226 F., 911. 5—922
- 24. Labor Organization, although Unincorporated, an Association under § 7 of the Sherman Law.**—In the Sherman Law, § 8, providing that the word "person" or "persons," wherever used in the act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country, the word "associations" includes unincorporated associations, such as labor organizations recognized by Federal and State legislation as lawful, and such an organization may be sued by its name, under section 7, by one injured in his business or property by its action in violation of the provisions of the act. *Dowd v. United Mine Workers of America*, 235 F., 6. 6—657
- 25. Same—Party Preparing to Engage in Interstate Commerce and Prevented by Unlawful Acts, may Maintain Action.**—That a plaintiff, at the time of the alleged unlawful acts of defendants, was not actually engaged in interstate commerce, does not deprive him of a right of action, where he was preparing to so engage and was prevented by the wrongful acts of defendants. *Ib.* 6—657
- 26. Subscribers may maintain, against telephone company, to compel service, where service is prevented by a strike.**—The Judicial Code, section 37, authorizing the dismissal of a suit in the Federal court if it should appear that it does not properly involve a dispute within the jurisdiction of the court, or that parties have been collusively made or joined for the purpose of giving the court jurisdiction, does not deprive the Federal court of jurisdiction over a suit by the subscribers of an interstate telephone company whose employees were on a strike, to compel the company to furnish

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service it had contracted to furnish, though the parties thereto were friendly antagonists, and the telephone company was willing to have the controversy submitted to the Federal court, since the collusion which deprives the court of jurisdiction is not an agreement between the parties that an existing dispute cognizable in the Federal courts shall be brought there, but an agreement so to adjust the situation as to clothe the court with an apparent jurisdiction which it otherwise would not have. *Stephens v. Ohio State Telephone Co.*, 240 F., 766. 6—929

27. Same—Several subscribers may maintain suit to compel service, although each has adequate remedy at law.—Under section 267, Judicial Code, providing that suits in equity shall not be maintained in the Federal courts where a plain, adequate, and complete remedy may be had at law, the fact that each one of a large number of subscribers of an interstate telephone company might have an adequate remedy at law for the interruption of the service which he contracted for does not prevent a suit by several subscribers, on behalf of all, to compel a restoration of the service, since, while the several actions at law were being tried, the suspension of service would continue, and might reach the proportions of a public calamity. *Ib.* 6—930

2. By stockholders.

28. Action by Stockholder for Injury to Corporation.—The declaration alleged that the T. Telegraph Co., in which plaintiff was a stockholder, was organized to operate an independent system throughout the United States, after which the defendant company secured control of the T. Co. by the purchase of its stock, to prevent competition in interstate telephone traffic, which it had planned to carry on. Defendant since so managed the T. Co. as not to develop its business, but to prevent it from doing business, and suppressed competition, until the T. Co. was forced into the hands of a receiver. By such control defendant had monopolized interstate telephone commerce, and thereby rendered worthless plaintiff's stock in the T. Co., which prior thereto had been worth \$15 a share. *On demurrer, held*, an injury to the corporation, and not to the stockholders of the T. Co., and that plaintiff could not therefore sue in his own name to recover treble damages under the Sherman Law, giving a right to recover three-fold damages to any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by such act. *Ames v. American Tel. & Tel. Co.*, 166 F., 822. 8—588

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purpose and effect, the recovery permitted in excess of damages actually sustained being in the nature of exemplary damages, which does not change the nature of the action, and such action is governed as to limitation by the statutes of the State in which it is brought. *City of Atlanta v. Chattanooga Foundry and Pipe Co.*, 101 F., 900. 2—11

Affirmed by Circuit Court of Appeals, 127 F., 23 (2—199).

The judgment of the circuit court was, however, reversed, but upon other grounds—a construction of section 4470, Tennessee Code.

Affirmed by Supreme Court (203 U. S., 390).

72. Same—Every Member of the Combination Liable for Damages.—

Every member of an illegal combination in restraint of interstate trade or commerce in violation of the Sherman Law is liable for the damages resulting to the business or property of a plaintiff by reason of such combination, and it is immaterial that there were no direct contract relations between plaintiff and defendant. *City of Atlanta v. Chattanooga Foundry and Pipe Works*, 127 F., 23. 2—299

73. Same—Measure of Recovery for Injury to Business.—If the effect of an illegal combination between manufacturers to prevent competition in the sale of a commodity which is a subject of interstate commerce be to enhance the price of such commodity to a purchaser, he is entitled to recover the difference between the price paid and the reasonable price under natural competitive conditions, as an injury to his business, whether such business is interstate or not, provided the transaction by which the purchase was made was interstate. *Ib.* 2—305

74. Conspiring to Injure Another in Business—Mailing Printed Circulars.—The action of an association of manufacturers in adopting a resolution denouncing a dealer in the product they manufactured, who bought and shipped such product to customers in other States and foreign countries, and in printing such resolution in circulars, and mailing the same to other manufacturers and customers of the dealer, whereby his business was injured, constituted an illegal combination or conspiracy in restraint of interstate and foreign commerce, and gives the person injured a right of action in a circuit court of the United States, under the Sherman Law, to recover the damages sustained. *Gibbs v. McNeeley*, 102 F., 594. 2—25

Verdict for defendant directed, 107 F., 210 (2—71), but

Reversed by Circuit Court of Appeals, 118 F., 120 (2—194).

75. Complaint Fatally Defective where it Fails to Show that Plaintiff Suffered Damage.—A complaint in a civil action based on the Sherman Law, alleging an illegal combination by

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act is inconsistent with the right of an individual to assert as a defense to a contract on which he is otherwise legally liable that the other party has no legal existence in contemplation of that act. *Wilder Mfg. Co. v. Corn Products Ref. Co.*, 238 U. S., 174. 6—554

141. **Same—Party Can Not Assert as Defense to a Suit for Money Fact that Plaintiff Was Organized in Violation of Sherman Law.**—In *Continental Wall Paper Co. v. Voight*, 212 U. S., 227, the contract involved was not held illegal because a party thereto was an illegal combination under the Sherman Law, but upon elements of illegality inhering in the contract itself. In this case, *held* that a party can not assert as a defense to a suit for money otherwise due under a contract, not inherently illegal, the fact that the party otherwise admittedly entitled to recover is an illegal combination under the Sherman Law. *Ib.* 6—553

142. **Same—Recovery of Purchase Price Can Not be Defeated by a Defense of Contract of Exclusively Dealing with Corporation Suing, or that the Goods Could Not be Resold.**—Recovery of the purchase price for goods sold and delivered by a corporation organized in violation of the Sherman Law may not be denied because the goods were sold upon condition which made the payment to the purchaser of his percentage under a proposed profit-sharing scheme devised by the corporation depend upon the exclusive dealing of the purchaser with the corporation during the following year, or because, under the contract of sale, the goods could not be resold. 57 L. Ed., 520. 6—549

4. *Patents—Illegal combination.*

143. **Infringement of Patent—No Defense that the Owner is an Illegal Corporation under Sherman Law.**—The fact that the owner of a patent is a corporation alleged to have been formed in violation of the Sherman Law, and that the patent is alleged to have been assigned to it in furtherance of the illegal purpose to create a monopoly and control the price of an article of commerce, is not available to an infringer of such patent to defeat a suit for the infringement. *National Folding-Box & Paper Co. v. Robertson*, 99 F., 985. 2—4
144. **Same.**—In an action by a corporation for the infringement of elevator patents, a private defendant was not entitled to urge as a defense that plaintiff was a corporation organized merely for the purpose of holding the legal title to various elevator patents alleging to have been infringed, for the purpose of controlling sales and enhancing prices of elevators and apparatus, without itself engaging in the manufacture and sale of such appliances, in violation of the Sherman Law, since

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purpose to restrain such commerce, and that was their necessary, although indirect, effect. *Dowd v. United Mine Workers of America*, 235 F., 7. 6—658

165. **When Doctrine of Laches is Inapplicable.**—The doctrine of laches is inapplicable to a suit to abrogate an illegal monopoly, where some of the acts in furtherance of the monopoly were committed just before the filing of the bill, and in addition to this, defendants were apprised before the beginning of the suit that their methods of doing business were deemed by the Government violations of the statute. *U. S. v. Eastman Kodak Co.*, 230 F., 523. 5—912

ACTS.

1. **Not Unlawful to Make, in Good Faith, Comparative Demonstrations of Cash Registers with Those of Competitors.**—It was not unlawful for the officers and agents of a company manufacturing and selling cash registers to compare by comparative demonstrations or otherwise competitive cash registers with their cash registers, for the purpose of demonstrating the superiority of their register, and thereby induce prospective purchasers to buy it. *Patterson v. U. S.*, 222 F., 650. 5—137
2. **Same—Unlawful to Induce Purchasers of Competing Cash Registers to Break their Contracts of Purchase.**—It was unlawful for the officers and agents of the N. Company, engaged in manufacturing and selling cash registers, to sell or offer to sell and try to sell the N. Company's cash registers to persons who had bought and owned competing cash registers, if this involved the purchaser breaking his contract with the competitor in any particular, or was done for the purpose of driving the competitor from the field; and on a trial for conspiring in restraint of the interstate trade of competitors, an instruction that it was not unlawful for such officers and agents to sell or offer and try to sell cash registers to persons who owned competing registers in exchange at such price as was satisfactory to the parties needed qualification, and was properly refused. *Id.* 5—137
3. **Same—Whether it was Lawful or not to Require Agents to Report Names of Purchasers of Competing Registers, Depended Upon Manner in Which, and Purpose for Which, the Information was Secured.**—Whether it was unlawful for the officers and agents of the N. Company, engaged in manufacturing and selling cash registers, to require agents of that company to report the names of persons who had purchased cash registers from competitors, or to secure samples of machines put on the market from competitors, depended on the manner in which the information or samples were obtained or secured; and on a trial for conspiring in re-

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straint of the interstate trade and commerce of competitors of the N. Company, an instruction that it was not unlawful to so require was too broad, and was properly refused. *Id.* 5—136

See also UNLAWFUL ACTS.

ADMINISTRATORS AND EXECUTORS.

1. In Absence of a Statute, Executor Can Be Sued Only in State Granting Letters.—An executor may not, in the absence of statute authorizing it, be sued outside of the State granting his letters. *Thorburn v. Gates*, 225 F., 613. 6—200
2. Same—The Subject of Administration a Proceeding in rem, and Executor is Official Charged with Duties of Management and Distribution.—The subject of administration of estate of decedent is in rem, and an "executor" is only an official charged with the duties of management and distribution, regardless of whether he is vested with title, or whether the obligation to pay debts is personal. *Id.* 6—201
3. Same—Code of New York Permits Suits Against Foreign, in Certain Cases.—The Code of Civil Procedure of New York, section 1866a, providing that a foreign executor may be sued in any court in the State in his capacity of executor under like restrictions as a non-resident may be sued, must be construed as opening the courts of New York to suits against foreign executors in cases where the law of the domiciliary State allows it. *Id.* 6—201

AGENTS.

1. Acts of, Acts of Principals.—The acts of agents and employees in furtherance of a conspiracy, are the acts of the principals. *Alaska S. S. Co. v. Inter. Longshermen's Ass'n*, 230 F., 969. 6—680

AGREEMENT.

1. Between Labor Union and Coal Operators in Other States to Compel Coal Company to Unionize Its Mines is Unlawful.—Complainant company commenced the operation of a coal mine in West Virginia with non-union miners. It was shortly notified by officers of the United Mine Workers of America that, unless it unionized its mine, a union mine in Ohio in which some of its stockholders were interested would be shut down, and it yielded, its workmen forming a union. A strike was ordered the next day, which was settled. In the next three years three strikes were ordered, and complainant was subjected to a loss thereby of \$48,000. At the time of the last, which was a general strike, it offered to comply with the terms demanded, and its employees desired to continue work, but were not permitted. They became dissatisfied, withdrew from the union, and made individual contracts with complainant by which it was agreed that the mine should remain non-union.

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2. **Same—Supreme Court Must Accept Trial Court's Construction of Counts of Indictment.**—The Supreme Court, when reviewing under the Criminal Appeals Act of March 2, 1907, the judgment of a circuit court whose ruling sustaining a demurrer to certain counts in an indictment charging violations of the Sherman Law, was based upon the construction of that statute, must accept the circuit court's construction of the counts of the indictment, and can consider only whether the decision that the acts charged are not condemned as criminal by the statute is based upon an erroneous construction of that statute. *U. S. v. Patten*, 57 L. Ed., 333. 4—752
3. **Same—Supreme Court Must Assume Indictment Alleges What Trial Court Treated it as Alleging.**—On appeal under the Criminal Appeals Act of 1907 the Supreme Court must assume that the counts of the indictment adequately allege whatever the lower court treated them as alleging; and, where its decision shows that it assumed that every element necessary to form a combination was present, the Supreme Court has jurisdiction to determine whether such a combination was illegal under the statute which defendants are charged with violating. *U. S. v. Patten*, 226 U. S., 540. 4—756
4. **Same—When Sustaining of a Demurrer to Indictment Involves Construction of Statute.**—A judgment of a Federal circuit court sustaining a demurrer to certain counts in an indictment charging violations of the Sherman Law, upon the ground that the acts charged are not within the condemnation of that statute, is based upon a construction of such statute within the meaning of the Criminal Appeals Act of March 2, 1907, governing the right of the Government to a review in a criminal case. *U. S. v. Patten*, 57 L. Ed., 333. 4—752
5. **When Supreme Court Will Not Consider a Contention Not Made in Lower Courts.**—A contention not made either in the Circuit Court or in the Circuit Court of Appeals, and which is contrary to the theory on which the cause was tried, will not be considered by the Supreme Court. *Virtue v. Creamery Package Mfg. Co.*, 57 L. Ed., 393. 4—835
6. **On Cross Appeals, Supreme Court Will Consolidate Appeals and Hear Whole Case.**—Where both parties have appealed, one from the decree entered on the mandate of the Supreme Court and the other from denial of a motion to modify such decree, as the whole decree is before the Supreme Court the dismissal of the latter appeal would not limit its power and duty to pass on the questions raised by it, the proper practice being to consolidate the appeals. *U. S. v. Terminal R. R. Ass'n*, 236 U. S., 200. 4—517
7. **Punishment for Criminal Contempt Not Reviewable by the Supreme Court on Appeal.**—A judgment of fine or imprisonment in proceedings for an alleged criminal contempt of an injunc-

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Public welfare is first considered, and, if the contract or combination appears to have been made for a just and honest purpose and the restraint upon trade is not specially injurious to the public and is not greater than the protection of the legitimate interests of the party in whose favor the restraint is imposed reasonably requires, the contract or combination is not illegal. Shiras, District Judge, dissenting, on the ground that this rule is not applicable to corporations charged with public duties. *U. S. v. Trans-Mo. Ft. Assn.*, 58 F., 58. 1—186

Case reversed, 168 U. S., 290 (1—648).

22. The test of the legality of a combination under the Sherman Law is its necessary effect upon competition in commerce among the States or with foreign nations.

If its necessary effect is only incidentally or indirectly to restrict that competition, while its chief result is to foster the trade and increase the business of those who make and operate it, it does not violate that law.

But, if its necessary effect is to stifle or directly and substantially to restrict free competition in commerce among the States or with foreign nations, it is illegal within the meaning of that statute. *U. S. v. Standard Oil Co.*, 173 F., 188. 3—712

23. The test of an "unlawful combination" under section 1 of the Sherman Law is its necessary effect upon free competition in commerce among the States or with foreign nations. A combination, the necessary effect of which is to stifle, or directly and substantially to restrict, such competition, is unlawful under that act. But if the necessary effect of a combination is but incidentally and indirectly to restrict competition, while its chief result is to foster the trade and increase the business of those who make and operate it, it does not fall under the ban of this law. *Union Pacific Coal Co. v. U. S.*, 173 F., 739. 3—735

24. Power Vested Indicative of Character.—The power to restrict competition in commerce among the several States or with foreign nations, vested in a person or an association of persons by a combination, is indicative of the character of the combination, because it is to the interest of the parties that such a power should be exercised, and the presumption is that it will be. *U. S. v. Standard Oil Co.*, 173 F., 188. 3—713

25. Same.—The combination in a single corporation or person, by an exchange of stock of the power of many stockholders holding the same proportions, respectively, of the majority of the stock of each of several corporations engaged in commerce in the same articles among the States or with foreign nations, to restrict competition therein, renders the power thus vested

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62. *Same.*—The modification of power and control over a commodity such as petroleum, and its products, by combining in one corporation the stocks of many other corporations aggregating a vast capital gives rise, of itself, to the prima facie presumption of an intent and purpose to dominate the industry connected with, and gain perpetual control of the movement of, that commodity and its products in the channels of interstate commerce in violation of the Sherman Law and that presumption is made conclusive by proof of specific acts such as those in the record of this case. *Ib.* 4—142
63. *Same.*—The constituents of an unlawful combination under the Sherman Law should not be deprived of power to make normal and lawful contracts, but should be restrained from continuing or recreating the unlawful combination by any means whatever; and a dissolution of the offending combination should not deprive the constituents of the right to live under the law but should compel them to obey it. *Ib.* 4—148
64. *The Tobacco Trust.*—The record in this case discloses a combination on the part of the defendants with the purpose of acquiring dominion and control of interstate commerce in tobacco by methods and manners clearly within the prohibition of the Sherman Law; and the subject matters of the combination and the combination itself are not excluded from the scope of the act as being matters of intrastate commerce and subject to State control. *U. S. v. American Tobacco Co.*, 221 U. S., 183. 4—237
65. *Same.*—In this case the combination in all its aspects both as to stock ownership, and as to the corporations independently, including foreign corporations to the extent that they became coöperators in the combination, come within the prohibition of the first and second sections of the Sherman Law. *Ib.* 4—237
66. *Same.*—In this case the combination in and of itself, and also all of its constituent elements, are decreed to be illegal, and the court below is directed to hear the parties and ascertain and determine a plan or method of dissolution and of recreating a condition in harmony with law, to be carried out within a reasonable period (in this case not to exceed eight months), and, if necessary, to effectuate this result either by injunction or receivership. *Ib.* 4—240
67. *Whether a Combination of Dealers in Milk Was an Unreasonable Restraint of Trade, Was for the Jury.*—Three classes of persons consisting of different individuals were under the control of the individual members of each class. They formed a combination by agreeing to offer and pay no more than a specified price for milk for resale in interstate commerce. The several persons were not guilty of any illegal purpose or of any oppressive methods, and, except as to price, they

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and also an attempt to monopolize a part of the trade and commerce among the States, within the prohibition of section 2, by shutting out from such trade all local dealers who were not members, and that defendants were liable in damages, under section 7 of the act, to such a dealer to whom a manufacturer in another State refused to sell tiles, as it had previously done, on the sole ground that such dealer was not a member of the association. *Montague v. Lowry*, 115 F., 27.

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Affirming *Lowry v. Tile, Mantel and Grate Assn. of Cal.*, 106 F., 38 (2—53).

93. Same—An Association of Dealers in Tiles Agreeing Not to Purchase from Non-Members or to Sell to Them, Except at an Advance of 50 per cent on Price to Members.—An association of wholesale dealers in tiles, mantels, and grates in California and vicinity, and manufacturers in other States, of tiles and fireplace fixtures, in which the dealers agree not to purchase from manufacturers not members of the association, and not to sell unset tile to non-members for less than list prices, which are more than 50 per cent higher than prices to members, while the manufacturers agree not to sell their products or wares to non-members at any price, under penalty of forfeiture of membership, is an agreement or combination in restraint of trade within the meaning of the Sherman Law. *Montague & Co. v. Lowry*, 198 U. S., 38.

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94. Same—Where the Sales were Made Within the State.—Although the sales in question were within the State of California and although such sales constituted a very small portion of the trade involved, the agreement of manufacturers without the State not to sell to anyone but members was part of a scheme which included the enhancement of the price of unset tiles by dealers within the State, and the whole thing was so bound together that the transactions within the State were inseparable and became a part of a purpose which when carried out amounted to, and was, a combination in restraint of interstate trade and commerce. *Addyston Pipe & Steel Co. v. United States*, 175 U. S., 211, followed; *Hopkins v. United States*, 171 U. S., 578; *Anderson v. United States*, 171 U. S., 604, distinguished. *Ib.*

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95. Same—The parties aggrieved, being a firm of dealers in tiles, mantels, and grates, in San Francisco, whose members had never been asked to join the association and who had never applied for admission therein, and which did not always carry \$3,000 worth of stock, as required by the rules of the association as one of the conditions of membership are entitled to recovery under section 7 of the Sherman Law. *Ib.*

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ting the price. Each member was required to deposit his shares with plaintiff, to be held as security to prevent a breach of the contract. Contracts were then made with jobbers and wholesalers, binding them to buy their entire requirements of plaintiff at specified prices and not to sell at less than the prices fixed by plaintiff on pain that if they did not enter into such contracts they could not buy at all. *Held*, that such transaction constituted an illegal combination in restraint of trade and interstate commerce in violation of the Sherman Law. *Continental Wall Paper Co. v. Voigt & Sons Co.*, 148 Fed., 946. 3—55

89. Combination of Dealers in and Manufacturers of Window Glass.—

A declaration alleged that defendant corporation was engaged in purchasing and contracting for the purchase of window glass from the manufacturers for certain-named jobbers and wholesale dealers doing business in different States who owned practically all of defendant's stock and controlled it; that such dealers comprised over 75 per cent of all those in the United States and sold more than 75 per cent of the window glass sold therein; that up to a certain date they were uncombined and competed freely with each other and with other wholesale dealers, but that on such date defendant entered into a combination and agreement with them and with a manufacturer which owned and operated factories in different States and manufactured 70 per cent of all the window glass made in the United States, by which defendant and such dealers agreed to buy window glass from no other manufacturer unless at materially lower prices; and such manufacturer agreed to sell to no other dealers except at higher prices than it charged them; that such agreement further limited the quantity of window glass to be purchased by each of such dealers to such as should be arbitrarily fixed by defendant and the manufacturer, and also gave them the power to arbitrarily fix excessive and unreasonable prices which were to be charged retail dealers, which prices such wholesale dealers agreed to observe under penalty of fines to be assessed against and paid by them; that it further restricted and limited the territory within which each of such dealers should sell to retail dealers, the object and effect of such combination and agreement being to restrain interstate commerce in window glass, to destroy competition therein, and to practically monopolize the same, especially in the better grades, which were practically all made by such manufacturer. *Held*, that the declaration charged a contract or combination in restraint of interstate commerce in violation of the Sherman Law which, as construed by the Supreme Court, makes unlawful any contract or combination in restraint of such trade or

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112. **Same.**—Where Goods are to be Delivered in the State.—A combination to restrain competition in proposals for contracts for the sale of certain articles which are to be delivered in the State in which some of the parties to the combination reside and carry on business is not, so far as those members are concerned, in violation of the Sherman Law, although the contract may be awarded to some party outside the State as the lowest bidder. *Ib.* 1—1041
113. **Same.**—Any agreement or combination which directly operates, not alone upon the manufacture, but upon the sale, transportation, and delivery of an article of interstate commerce, by preventing or restricting its sale, thereby regulates interstate commerce to that extent, and thus trenches upon the power of the national legislation, and violates the statute. *Ib.* 1—1036
114. **Same.**—When the direct, immediate, and intended effect of a contract or combination among dealers in a commodity is the enhancement of its price, it amounts to a restraint of trade in the commodity, even though contracts to buy it at the enhanced price are being made. *Ib.* 1—1038
115. **Same.**—The contracts considered in this case, set forth in the statement of facts and in the opinion of the court, relate to the sale and transportation to other States of specific articles, not incidentally or collaterally, but as a direct and immediate result of the combination entered into by the defendants; and they restrain the manufacturing, purchase, sale, or exchange of the manufactured articles among the several States, and enhance their value, and thus come within the provisions of the “act to protect trade and commerce against unlawful restraints and monopolies.” *Ib.* 1—1036
116. **Same.**—The judgment of the court below, which perpetually enjoined the defendants in the court below from maintaining the combination in cast-iron pipe as described in the petition, and from doing any business under such combination, is too broad, as it applies equally to commerce which is wholly within a State as well as to that which is interstate or international only. *Ib.* 1—1041
117. **Agreement Between Live-Stock Buyers not to Bid Against Each Other, Etc.**—An agreement between corporations and individuals, etc., engaged in buying live stock at divers points throughout the United States, to refrain from bidding against each other in the purchase of cattle is a combination in restraint of trade; so also their agreement to bid up prices to stimulate shipments, intending to cease from bidding when the shipments have arrived, and the same result follows from the combination of defendants to fix prices upon and restrict the quantities of meat shipped to their agents or their customers. Being restriction upon competition such

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- agreements are a combination in restraint of trade. *U. S. v. Swift & Co.*, 122 F., 529. 2—237
118. Same.—Restraint of trade is not dependent upon any consideration of reasonableness or unreasonableness in the combination averred, nor is it to be tested by the prices that result from the combination. The statute has no concern with prices, but looks solely to competition and to the giving of competition full play by making illegal any effort at restriction upon competition. *Ib.* 2—244
119. Same.—A combination of a dominant proportion of the dealers in fresh meats throughout the United States not to bid against, or only in conjunction with, each other in order to regulate prices in and induce shipments to the live-stock markets in other States, to restrict shipments, establish uniform rules of credit, make uniform and improper rules of cartage, and to get less than lawful rates from railroads to the exclusion of competitors with intent to monopolize commerce among the States, is an illegal combination within the meaning and prohibition of the Sherman Law, and can be restrained and enjoined in an action by the United States. *Swift & Co. v. United States*, 196 U. S., 375. 2—641
120. Same.—It does not matter that a combination of this nature embraces restraint and monopoly of trade within a single State if it also embraces and is directed against commerce among the States. *Ib.*
121. Same.—The effect of such a combination upon interstate commerce is direct and not accidental, secondary, or remote as in *United States v. E. C. Knight Co.*, 156 U. S., 1. *Ib.*
122. Same.—Even if the separate elements of such a scheme are lawful, when they are bound together by a common intent as parts of an unlawful scheme to monopolize interstate commerce the plan may make the parts unlawful. *Ib.*
123. Same.—When cattle are sent for sale from a place in one State, with the expectation they will end their transit, after purchase, in another State, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a constantly recurring course, it constitutes interstate commerce, and the purchase of the cattle is an incident of such commerce. *Ib.*

3. Contracts, etc., in restraint of interstate trade or commerce.

124. Contracts, Combinations, etc., Against Public Policy and Void Under the Common Law.—The contracts, combinations in the form of trust or otherwise, and conspiracies in restraint of trade declared to be illegal in the Sherman Law, are the contracts, combinations, and conspiracies in restraint of trade that had been declared by the courts to be against

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- E. O. Knight Co.*, 15 Sup. Ct., 249; 156 U. S., 1, distinguished.
U. S. v. Addyston Pipe & Steel Co., 85 F., 271. 1—772
131. To render a combination unlawful under the Sherman Law, it need not be one which by its terms refers to interstate commerce, but it is sufficient if its purpose and effect are necessarily to restrain interstate trade. *Gibbs v. McNeeley*, 118 F., 120. 2—194
132. Every Contract, Combination, or Conspiracy, in Whatever Form, of Whatever Nature, and Whoever May be Parties to it, which Directly or Necessarily Operates in Restraint of Interstate Trade or Commerce.—Although the act of Congress known as the Sherman Law has no reference to the mere manufacture or production of articles or commodities within the limits of the several States, it embraces and declares to be illegal every contract, combination, or conspiracy, in whatever form, of whatever nature, and whoever may be parties to it, which directly or necessarily operates in restraint of trade or commerce among the several States or with foreign nations. *Northern Securities Co. v. United States*, 193 U. S., 830 (Harlan, Brown, McKenna, Day). 2—461
133. Same.—The act is not limited to restraints of interstate and international trade or commerce that are unreasonable in their nature, but embraces all direct restraints, reasonable or unreasonable, imposed by any combination, conspiracy, or monopoly upon such trade or commerce. *Ib.* 2—461
134. Railroad carriers engaged in interstate or international trade or commerce are embraced by the act. *Ib.* 2—461
135. Combinations, even among private manufacturers or dealers, whereby interstate or international commerce is restrained, or commerce are embraced by the act. *Ib.* 2—461
136. Every combination or conspiracy which would extinguish competition between otherwise competing railroads, engaged in interstate trade or commerce, and which would in that way restrain such trade or commerce, is made illegal by the act. *Ib.* 2—462
137. The natural effect of competition is to increase commerce, and an agreement whose direct effect is to prevent this play of competition restrains instead of promotes trade and commerce. *Ib.* 2—462
138. The Northern Securities Company combination is a "trust" within the meaning of the Sherman Law; but if not, it is a combination in restraint of interstate and international commerce, and that is enough to bring it under the condemnation of the act. *Ib.* 2—458
139. Every contract, combination, or conspiracy, the necessary effect of which is to stifle or to directly and substantially restrict competition in commerce among the States, is in restraint

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States and Territories, which yards furnished the only available public market for that purpose for an exceedingly large area, and which by its rules fixed a minimum rate of commissions to be charged by members of the association, and prohibited the employment by any commission firm or corporation of more than three persons to travel and solicit business, and prohibited the sending of prepaid telegram or telephone messages quoting the markets, and shut out all dealings and business intercourse between members and non-members, and boycotted and blacklisted persons attempting to carry on business without joining the exchange, thus effectually preventing them from securing or transacting business, *held* to be an illegal combination to restrict, monopolize, and control that class of trade and commerce. *U. S. v. Hopkins*, 82 F., 529. 1—725

Reversed, 171 U. S., 578 (1—941).

160. **Same—Reasonableness of Restraints.**—The act of Congress is aimed against all restraints of interstate commerce, and its purpose is to permit commerce between the States to flow in its natural channels, unrestricted by any combinations, contracts, conspiracies, or monopolies whatsoever. The reasonableness of the restrictions in a given case is immaterial. *Ib.* 1—735

161. **Agreement Between Live-Stock Buyers Not to Bid Against Each Other, etc.**—An agreement between corporations and individuals, etc., engaged in buying live stock at divers points throughout the United States, to refrain from bidding against each other in the purchase of cattle is a combination in restraint of trade; so also their agreement to bid up prices to stimulate shipments, intending to cease from bidding when the shipments have arrived, and the same result follows from the combination of defendants to fix prices upon and restrict the quantities of meat shipped to their agents or their customers. Being restriction upon competition, such agreements are a combination in restraint of trade. *U. S. v. Swift & Co.*, 122 F., 529. 2—237

Affirmed, 196 U. S., 375 (2—641).

162. **Same.**—Restraint of trade is not dependent upon any consideration of reasonableness or unreasonableness in the combination averred, nor is it to be tested by the prices that result from the combination. The statute has no concern with prices, but looks solely to competition and to the giving of competition full play by making illegal any effort at restriction upon competition. *Ib.* 2—244
163. **A combination entered into by independent meat dealers to secure less than lawful freight rates, with the intent to monopolize commerce in fresh meat among the several States,**

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174. *Same.*—Necessarily, the constituent companies ceased, under this arrangement, to be in active competition for trade and commerce along their respective lines, and became, practically, one powerful consolidated corporation, by the name of a holding corporation, the principal, if not the sole, object for the formation of which was to carry out the purpose of the original combination under which competition between the constituent companies would cease. *Ib.* 2—457
175. *Same.*—A combination by stockholders in two competing interstate railway companies to form a stockholding corporation which should acquire, in exchange for its own capital stock, a controlling interest in the capital stock of each of such railway companies violates the Sherman law, which declares illegal every combination or conspiracy in restraint of interstate commerce and forbids attempts to monopolize such commerce or any part of it. (48 L. ed., 679.) 2—342
176. *Same.*—Where no individual investment is involved, but there is a combination by several individuals separately owning stock in two competing railroad companies engaged in interstate commerce to place the control of both in a single corporation which is organized for that purpose expressly and as a mere instrumentality by which the competing railroads can be combined, the resulting combination is a direct restraint of trade by destroying competition, and is illegal within the meaning of the Sherman Law. (Brewer, concurring.) *Ib.* 2—341
177. *Holding Company Exchanging Its Stock for the Stock of Oil Companies.*—In 1899 the stockholders of the Standard Oil Co. of New Jersey owned a majority of the stock of 19 other corporations in the same proportions that they owned the stock of the Standard Co., and those 20 corporations controlled, by the ownership of the majority of their stock or otherwise, many other corporations. Each of these corporations was engaged in some part of the business of producing, buying, refining, transporting, and selling petroleum and its products, and they were conducting about 30 per cent of the production of crude oil and more than 75 per cent of the business of purchasing, refining, transporting, and selling petroleum and its products in this country. Many of them were engaged in commerce in these articles among the several States and with foreign nations, and were naturally competitive.

During the 10 years prior to 1879 the seven individual defendants had acquired control of many corporations, partnerships, and refineries that had been competing in this business, had placed the majority of the stock of those corporations and the interests in property and business thus obtained in various trustees, to be held and operated by them for

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the stockholders of the Standard Oil Co. of Ohio, one of the 19 companies in which the individual defendants were principal stockholders, and had thereby suppressed competition among these corporations and partnerships. In 1879 they and their associates caused all the trustees to convey their interests in the stock, property, and business of all these corporations to five trustees, to be held, operated, and distributed by them for the stockholders of the Standard Co. of Ohio. From 1879 until 1892 they prevented these corporations and others engaged in this business, of which they secured control, from competing in this commerce by causing the control of their operations, and generally of a majority of their stocks, to be held in trust for the stockholders of the Standard Co. of Ohio, and from 1892 until 1899 they accomplished the same result by a similar stockholding device and by the joint equitable ownership of the majority of the stocks of the corporations.

In the year 1899 the seven individual defendants and their associates caused the majority of the stock of the 19 corporations to be transferred to the Standard Oil Co. of New Jersey in exchange for its stock, so that the latter company thereby acquired the legal title to a majority of the stock of each of the 19 companies, the control of these companies and of all the companies which they controlled, and the power to fix the rates of transportation, and the purchase and selling prices of petroleum and its products, which all these corporations should pay and receive in the conduct of their business in commerce among the States and with foreign nations. Since that exchange of stock the seven individual defendants have been and are stockholders and officers of the Standard Co. of New Jersey, which has exercised and is still using that power, and by its use it has prevented and is still preventing competition in commerce among the States and with foreign nations among these corporations.

Held, the transaction constituted a combination and conspiracy in restraint of and to monopolize commerce among the States and with foreign nations in violation of sections 1 and 2 of the Sherman Law, and the Government is entitled to an injunction against the further continuance and operation thereof. *U. S. v. Standard Oil Co.*, 173 F., 191. 3—717

7. Patent and copyright monopolies—Illegal combinations and contracts.

178. A corporation organized for the purpose of securing assignments of all patents relating to "spring-tooth harrows," to grant licenses to the assignors to use the patents upon payment of a royalty, to fix and regulate the price at which such harrows shall be sold, and to take charge of all litiga-

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269. A combination is not illegal as in violation of the Sherman Law merely because it may indirectly, incidentally, or remotely restrain interstate trade or tend toward monopoly, if its main purpose and chief effect are to promote the business and increase the trade of the parties in a legitimate way. *Bigelow v. Calumet & Hecla Mining Co.*, 167 F., 712. 3—605
270. A combination, the sole object of which is to manufacture an article of common necessity, is not, without more, a violation of the Sherman Law, prohibiting combinations in restraint of interstate commerce. *Monarch Tobacco Works v. American Tobacco Co.*, 165 F., 779. 3—542
271. Consolidation of Corporations.—The Sherman Law, prohibiting trusts and monopolies, does not condemn the purchase by three corporations of two insolvent corporations engaged in the same business, nor in the conduct of the business thereafter by the three purchasers, especially in an effort to liquidate the indebtedness. *N. W. Consol. Milling Co. v. Callam & Son*, 177 F., 788. 3—762
272. The organization by a number of mercantile jobbers located in the same city of a brokerage company, of which they owned the stock, and the purchase of merchandise required by them from manufacturers and jobbers in other States through such company, instead of through other brokers previously patronized, although there was no agreement binding them to do so, and the use of their influence to extend its business, did not constitute a combination or conspiracy in restraint of interstate trade or commerce, or to monopolize the same, in violation of the Sherman Law, but was a legitimate and lawful business enterprise. *Arkansas Brokerage Co. v. Dunn & Powell*, 173 F., 903. 3—758
273. Combination to Monopolize Refining and Selling Sugar by Buying up all Competitors not a Violation of the Statute.—A combination whose object is to enable a single company to monopolize and control the business of refining and selling sugar by buying up all competing concerns in the United States, is not in violation of the Sherman Law, for it constitutes no restriction upon or monopoly of commerce between the States, but, at most, only makes it possible for the promoters of the combination to restrict or monopolize such commerce, should they so desire. *U. S. v. H. C. Knight Co.*, 60 F., 806. 1—250
274. Same.—The purchase of stock of sugar refineries for the purpose of acquiring control of the business of refining and selling sugar in the United States does not involve monopoly, or restraint of interstate or foreign commerce within the meaning of the Sherman Law. *U. S. v. H. C. Knight Co.*, 60 F., 834. 1—253

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chase will not be held illegal under the statute because of such facts, where its primary purpose is to secure through friendly coöperation and the joint use of facilities a more economical operation of the mines, especially where the controlled corporation is one of a group previously under a common control and management, and whose products were sold through a common agency; nor does the fact that such purchase will result in the transfer of such agency as to its product to that of the purchasing company tend to unlawfully restrain competition. *Bigelow v. Calumet & Hecla Mining Co.*, 167 F., 711. 3—604

279. Corporate Rights as Regards Acquisition of Property to an Extent which Gives Control of Traffic Therein Among the States Not Prohibited.—Congress has no authority, under the commerce clause or any other provision of the Constitution, to limit the right of a corporation created by a State in the acquisition, control, and disposition of property in the several States, and it is immaterial that such property, or the products thereof, may become the subjects of interstate commerce. It is apparent that by the Sherman Law, Congress did not intend to declare that the acquisition by a State corporation of so large a part of any species of property as to enable the owners to control the traffic therein among the several States, constituted a criminal offense. *In re Greene*, 52 F., 104. 1—55

280. Contract by which Stockholders of a Corporation Agree Not to Enter Into Competition With Purchaser of the Business of the Company.—The Sherman Law has no application to a contract by which the stockholders of a corporation engaged in dealing in fish at different places, in consideration of the purchase of the business and good will of the company by another, agreed not to enter into competition with him in such business for the term of 10 years. *A. Booth & Co. v. Davis*, 127 F., 85. 2—318

281. Same.—Such a covenant by the stockholders rests upon a good consideration and is lawful, and the right of the purchaser to enforce it can not be affected by the question whether he has conducted the business lawfully since his purchase. *Ib.* 2—325

282. Same—Suit to Enforce—Defenses.—In a suit to enjoin a defendant from violating such a contract and to enjoin a codefendant from employing his services in a competing business, it is no defense that his co-defendant hired him in ignorance of the contract, and will suffer damage if deprived of his services. *Ib.* 2—326

283. Same—Corporation Selling Out Assets and Good Will and Thereby Incidentally or Remotely Affecting Interstate Commerce.—Where a corporation engaged in the business of buying and

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arrangement constituted only a partial and reasonable restraint on foreign commerce, and was therefore not unlawful at common law. *Thomson v. Union Castle Mail S. S. Co.*, 149 F., 934. 3—111

289. **Mere Agreement to Monopolize not Prohibited.**—The Sherman Law provides that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations is illegal; that every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States or with foreign nations shall be guilty of a misdemeanor; and that any person injured in his business or property by anything forbidden by the act may sue therefor. *Held*, That a mere agreement to monopolize the manufacture of an article of commerce is not prohibited, but that, in order to be within the act, the contract, combination, or conspiracy must be in itself in restraint of trade or commerce among the several States or with foreign nations, or, if a monopoly or attempted monopoly or combination or conspiracy to monopolize, it must be of some part of the trade or commerce among the several States or foreign nations. *U. S. Tobacco Co. v. American Tobacco Co.*, 163 F., 708. 3—420

290. **Citizens Combining in Good Faith to Enforce Ordinance Believed to be Valid, though Invalid, not Unlawful.**—Citizens of a municipality, who in good faith combine to enforce an ordinance thereof, believing on reasonable grounds that it is valid, while in fact invalid as interfering with interstate commerce and so finally adjudged in the litigation instituted by them, are not guilty of violating the Sherman Law, and are not liable for damages sustained by the person prosecuted by them for violating the ordinance. *Citizens' Wholesale Supply Co. v. Snyder*, 201 F., 910. 4—879

291. **Same—Certain Corporation not Chargeable with Participation in an Unlawful Combination.**—A corporation manufacturing dairy products under patents owned by it is not chargeable with participation in a combination formed contrary to the Sherman Law, by its exclusive sales agent and other manufacturers and dealers, so as to render the corporation and its agent liable under the treble damage clause of section 7 of that act to persons joined as defendants in simultaneous patent infringement suits separately brought by such principal and agent, either because the sales agency contract, which antedated the illegal combination, provided that the manufacturer should protect the agent from all suits for infringement, should defend the validity of the patents, and promptly attack infringers, or because of a supplementary

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296. Same—Where the Record Does Not Show Certain Facts, Government Can Not Make Certain Claims.—Where the share in interstate commerce does not appear in the record, and the machines in question are not alleged to be types of all the machines used in manufacturing the article for which they are made, the Government can not claim that a specified proportion of the business was put into a single hand. *Ib.*

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297. Same—Union of Companies Manufacturing Non-Competing Group of Patented Machines, Not a Violation of Sherman Law.—The union in one corporation of three companies, each manufacturing a different non-competing group of patented machines collectively used for making shoes, is not forbidden by the prohibitions of the Sherman Law against combinations in restraint of interstate trade, although a large percentage of all the shoe machinery business may thus have been put into a single hand. *U. S. v. Winslow*, 57 L. Ed., 481.

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298. Union in One Corporation of a Number of Others, Each Manufacturing Non-Competing Machines, Not a Violation of the Sherman Law.—The union in one corporation of a number of others, each of which had been engaged in the manufacture of patented non-competing machines, but which were used successively in a manufacturing business, is not a combination in restraint of trade, in violation of the Sherman Law. *U. S. v. United Shoe Mach. Co.*, 222 F., 362.

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299. Same—The Acquiring, by Fair Means, of Patents, and Business of Other Manufacturers of Different Classes of Machinery, Did Not Evidence an Attempt to Create a Monopoly.—The United Shoe Machinery Co. was formed by the consolidation of a number of companies, each engaged in making patented machines for use in the manufacture of shoes, for the most part non-competing. During the ensuing 11 years it also acquired the patents, property, and business of a considerable number of other manufacturers of different classes of machinery, all of which was used in the manufacture of shoes, and comprising a group of machines covering practically all of the operations required in such manufacture, by which means the company obtained a very large percentage of the trade in such machinery, although it appeared that neither its property nor its business was acquired by unfair means, but, on the contrary, that in most cases its purchases from others were made at their solicitation, and that in many more cases it refused to buy the business of others which was offered. *Held*, that such facts did not characterize the company as a "combination in restraint of trade," or evidence an attempt to create a monopoly, within the meaning of the Sherman Law. *Ib.*

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the two roads, or to interfere in any manner with the fixing of rates by either company. *Ib.* 2—260

7. *Patents—Combinations, etc., to keep up the monopolies.*

338. **Holding Company.**—Contracts by which a number of patents covering similar inventions are conveyed by the several owners to one of the parties, which grants licenses under all to the others, are not void as against public policy or as in violation of the Sherman Law, because of provisions intended to protect and keep up the patent monopoly by requiring the licensor to prosecute all infringers, limiting the licenses to be granted to such licensees as shall be agreed on, and imposing conditions on each licensee as to the use and ownership of the patented machines, and prohibiting him from using any others. *U. S. Consolidated Seeded Raisin Co. v. Griffin & Skelley Co.*, 128 F., 364. 2—288

339. Conditions imposed by the patentee in a license of the right to manufacture or sell the patented article, which keep up the monopoly or fix prices, do not violate the Sherman Law, to protect trade and commerce against unlawful restraints or monopolies. *Bement v. National Harrow Co.*, 186 U. S., 70. 2—170

340. Reasonable and legal conditions imposed by the patentee in a license of the right to manufacture and sell the patented article, restricting the terms upon which the article manufactured under such license may be used and the price to be demanded therefor, do not constitute such a restraint on commerce as is forbidden by the Sherman Law, to protect trade and commerce against unlawful restraints and monopolies. *Ib.* 2—189

341. The agreement of the licensee of a patent for improvements relating to float spring-tooth harrows not to manufacture or sell any other such harrows than those which it had made under its patents before assigning them to the licensor, or which it was licensed to manufacture and sell under the terms of the license, except such other style and construction as it may be licensed to manufacture and sell by such licensor, is not void as an unlawful restraint on trade or commerce forbidden by the Sherman Law, since the plain purpose of this provision is to prevent the licensee from infringing on the rights of others under other patents, and not to stifle competition or prevent the licensee from attempting to make any improvement in harrows. *Ib.* 2—191

342. An agreement by the licensor of a patent for improvements relating to harrows not to license any other person, than the licensee to manufacture or sell any harrow of the peculiar style and construction then used or sold by such licensee does not violate the Sherman Law, to protect trade and commerce against unlawful restraints and monopolies. *Ib.* 2—191

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notice before some monthly meeting of every reduction of rates or deviation from the rules it proposes to make, that it will advise with the representatives of the other members at the meeting relative to the proposed modification, will submit the question of its proposed action to a vote at that meeting, and, if the proposition is voted down, that it will then give ten days' notice that it will make the modification notwithstanding the vote before it puts the proposed change into effect; that no member will falsely bill any freight, or bill any at a wrong classification; and that any member may withdraw from the association on a notice of 30 days, appears to be a contract tending to make competition fair and open, and to induce steadiness of rates, and is in accord with the policy of the Interstate Commerce act. Such agreement can not be adjudged to be a contract or conspiracy in restraint of trade under the Sherman Law when it is admitted that the rates maintained under the same have been reasonable and that the tendency has been to diminish rather than to enhance rates, and there is no other evidence of its consequences or effect. Shiras, district judge, dissenting. 53 Fed. Rep., 440, affirmed. *U. S. v. Trans-Mo. Ft. Assn.*, 58 F., 58. 1—186

Reversed, 166 U. S., 290 (1—648).

348. Same.—No monopoly of trade or attempt to monopolize trade within the meaning of the Sherman Law is proved by such a contract. *Ib.* 1—217

349. Same.—The railroad companies who are parties to such a contract do not thereby substantially disable themselves from the discharge of their public duties. *Ib.* 1—218

350. A contract by which a railroad company arranges with another, to the exclusion of still others, for the interchange of passengers and freight by through tickets and bills of lading is not a contract in unlawful restraint of trade, within the meaning of the Sherman Law. *Prescott & A. C. R. Co. v. Atchison, T. & S. F. R. Co.*, 73 F., 438. 1—604

351. Contract Between Railroad Company and Individual Giving to Latter Exclusive Control of Shipment of Milk Over its Lines, Including the Fixing of Rates.—Defendant railroad company entered into a contract with plaintiff for a term of years to build up, develop, and conduct the business of the transportation of milk on its lines of road. Plaintiff was to have full charge of such business and was to receive as compensation a percentage of the freights earned therein. It was provided that he should charge rates not in excess of those charged by competitive roads, and should be granted the exclusive privilege of transporting milk over defendant's lines "so far as it was permitted to do so by law." In the execution of the contract all rates were made by defendant, and

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plaintiff was not given a monopoly of the milk traffic. *Held*, That such contract was not ultra vires nor void as contrary to public policy, especially as practically construed by the parties in its execution; nor was it in violation of the Sherman Law. *Delaware, L. & W. R. Co. v. Kuttner*, 147 F., 51.

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352. Contracts or combinations between railroad companies which do not directly and necessarily affect transportation, or rates therefor, are not in restraint of trade or commerce, nor within the Minnesota anti-trust law of 1899, which is in substantially the same language as the Sherman Law, even though they may remotely and indirectly appear to have some probable effect in that direction. *Minnesota v. Northern Securities Co.*, 123 F., 692.

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353. Joint Traffic Associations—Proportionate Rates and Division of Traffic.—A combination of railroad companies into joint traffic associations, under articles of agreement by which each road carries the freight it may get over its own line, at its own rates, and has the earnings to itself, though providing proportional rates of proportional division of traffic, is not a pooling of traffic on freights or division of net proceeds of earnings, within the prohibitions of the Interstate Commerce Law, nor of the Sherman Law, against unlawful restraints and monopolies. *U. S. v. Joint Traffic Assn.*, 76 F., 895.

1—615

Reversed, 171 U. S., 505 (1—869).

354. Through Transportation—Prepayment of Freight.—A common carrier engaged in interstate commerce may at common law and under the Interstate Commerce Law demand prepayment of freight charges, when delivered to it by one connecting carrier, without exacting such prepayment when delivered by another connecting carrier, and may advance freight charges to one connecting carrier without advancing such charges to another connecting carrier. *Gulf, C. & S. F. Ry. Co. v. Miami S. S. Co.*, 86 F., 407.

1—823

355. Same—Joint Rates and Billing.—Such carrier may enter into a contract with one connecting carrier for through transportation, through joint traffic, through billing, and for the division of through rates, without being obligated to enter into a similar contract with another connecting carrier. *Ib.*

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356. Same—Remedy not by Injunction, but by Suit for Damages.—The remedy of a party injured by such an agreement is not by bill of injunction, but by a suit for threefold damages under the Sherman Law, the only party entitled to maintain a bill of injunction under that act being the Government of the United States. *Ib.*

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- vendors agree to withdraw from competition for five years, is not a contract in restraint of interstate trade under the Sherman Law, and the purchaser is not relieved from his obligation to pay the purchase price. *Cincinnati, etc., Packet Co. v. Bay.*, 200 U. S., 179. 2—867
367. Same.—A contract is not to be assumed to contemplate unlawful results unless a fair construction requires it. *Ib.* 2—872
368. Same.—Even if there is some interference with interstate commerce, a contract is not necessarily void under the Sherman Law if such interference is insignificant and merely incidental and not the dominant purpose; the contract will be construed as a domestic contract and its validity determined by the local law. See *U. S. v. Trans-Mo. Ft. Assn.*, 166, U. S., 290, 329; *U. S. v. Joint Traffic Assn.*, 171 U. S., 505, 568; and *Bement v. National Harrow Co.*, 186 U. S., 70, 92. *Ib.* 2—872
369. Same.—A contract for sale of vessels, even if they are engaged in interstate commerce, is not necessarily void because the vendors agree, as is ordinary in case of sale of a business and its good will, to withdraw from business for a specified period. *Ib.* 2—873
370. The Sherman Law does not apply to a contract or combination relating to the business of manufacturing within a State. *Robinson v. Suburban Brick Co.*, 127 F., 804. 2—812
371. Agreements not to Engage in Business—Contracts in Partial Restraint of Trade.—A covenant in a contract by which the owners of brick making plants conveyed them to a corporation in exchange for its stock, binding the sellers not to engage in competing business within a radius of 50 miles from the place of business of the corporation for a term of 10 years, is valid, and may be enforced in a court of equity by a suit to enjoin its violation. *Ib.* 2—816
372. A combination to restrain competition in proposals for contracts for the sale of certain articles which are to be delivered in the State in which some of the parties to the combination reside and carry on business is not, so far as those members are concerned, in violation of the Sherman Law, although the contract may be awarded to some party outside the State as the lowest bidder. *Addyston Pipe & Steel Co. v. U. S.*, 175 U. S., 211. 1—1009
373. Same—Jurisdiction of Congress.—Although the jurisdiction of Congress over commerce among the States is full and complete, it is not questioned that it has none over that which is wholly within a State, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce; nor does it acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a State by reason of the fact that

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age and sales equipment throughout the country, which after such decisions, in good faith, organized a separate coal company to lease its outside equipment and buy the product of its mines at the breakers, in which operation it owns no stock, but sold the greater part to its own stockholders, by whom much of it was afterwards sold to third persons, is not prohibited from carrying the coal from its mines after it has passed into the ownership of the coal company. *Ib.*

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3. Same—To Render Such Transportation Unlawful, Not Sufficient that Small Number of Persons Own Controlling Interest in Both Companies, etc.—It is insufficient to render such transportation unlawful that a comparatively small number of persons own a controlling interest in both the railroad company and the coal company, and that some of the officers and directors of the two are the same, where the business of each is separately conducted, and no discrimination is shown to have been made by the railroad company in favor of the coal company as a shipper. *Ib.*

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4. Legality of Transportation by Railroad of Coal It Has Sold at Its Mines, Considered in Connection with Commodity Clause of Hepburn Act.—A railroad corporation engaged at the time of the passage of the Hepburn Act in the business of mining, buying, transporting and selling coal, in order to divest itself of title after the coal had been mined and before transportation began, caused a coal company to be incorporated having stockholders and officers in common with itself; thereupon the two corporations having a common management entered into a contract prepared by the railroad company under which the railroad company did not go out of the mining and selling business, but when the coal was brought to the surface it lost title by a sale to the coal company *f. o. b.* the mines and instantly as carrier regained possession and retained it until delivery to the coal company which subsequently paid the contract price; the price paid was a fixed percentage of the price and a fixed terminal on the day of delivery at the mines, and the railroad agreed to sell all of the coal it produced or purchased from others to the coal company and the latter company agreed to buy only from the railroad company and subject to the contract; the stockholders of the railroad company were allowed to take *pro rata* the stock of the coal company and practically all availed of the option, and the coal company declared a dividend on each share of stock sufficient to pay for the amount of stock allotted to the holder thereof. In a suit brought by the Government alleging that the two corporations were practically one and that the contract was invalid, *Held*, that:

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by Railroad Company of Coal Company's Coal, under Commodity Clause.—The mere ownership by railway stockholders of the stock of a coal company cannot be used as a test by which to determine the legality of the interstate transportation of the coal company's coal by the railway company, under the act of June 29, 1906 (34 Stat., 584), making it unlawful for any railway company to transport in interstate commerce any article which it may own, or in which it may have any interest, direct or indirect. *Ib.* 59 L. Ed., 1438. 6—270

13. **Practically Identical Stock Ownership of Railroad Company and Coal Company, Renders Transportation by Railroad Company of Coal It Has Sold at Its Mines to the Coal Company, Unlawful, under Sherman Law and Commodity Clause of Hepburn Law.**—A contract between a railway company owning anthracite coal mines and a coal company, with practically identical stock ownership and management, by which the railway company sold the coal at the mouth of the mines to the coal company and instantly regained possession as carrier, retaining possession until delivery at the conclusion of the interstate transportation to the coal company, which subsequently paid therefor at the contract price, viz, 65 per cent of the New York market price on the day of delivery at the mines, violates both the Commodities Clause of the Hepburn Act of June 29, 1906 (34 Stat., 584), making it unlawful for any railway company to transport in interstate commerce any article which it may own or in which it may have any interest, direct or indirect, and the Sherman Law, prohibiting contracts in restraint of interstate trade, where such coal company was created for the express purpose of becoming a party to such contract, under which it was to handle nothing except the railway company's coal, and was dependent solely upon the railway company for the amount it could procure and sell, and was absolutely excluded from the right to purchase elsewhere without the consent of the railway company (which, however, was under no corresponding obligation to supply any definite amount at any definite date), and was to conduct the selling of the coal so as best to conserve the interests, good will, and markets of the coal mined by the railway company, and was to continue to fill the orders of present responsible customers of the railway company, even if some of such sales might be unprofitable. *Ib.* 6—279

14. **The Holding by the Reading Co. of Capital Stock of Other Railroad and Coal Companies, and the Carriage by It of the Coal from Its Owned Coal Companies Does Not Render Such Transportation Unlawful under Commodity Clause, Hepburn Law.**—The Philadelphia & Reading Coal & Iron Co. was incorporated in 1871 as a subsidiary company by the Philadelphia & Reading Railroad Co. to take over

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and operate coal properties which the railroad company had purchased or desired to purchase. In 1896, when both companies were in the hands of receivers, a reorganization was effected. The property of both companies was sold. Most of the railroad property was conveyed by the purchasers to the Philadelphia & Reading Railway Co., organized for the purpose, while the coal property was reconveyed to the coal and iron company. The capital stock of both these companies was issued to the Reading Co., a holding corporation, which has since continued to own practically all of the same. Since that time, while there has been a common ownership of the two companies and to some extent common directorates, their operating departments and officers have been entirely separate, and the business between them has been conducted at arms' length. The railway company has charged the coal company customary rates for the carriage of its coal, without discrimination, and has purchased and paid for all coal for its own use. *Held*, That the railway company did not mine or produce the coal transported for the coal company, nor did it own or have any interest, direct or indirect, in such coal, which rendered its transportation of the same unlawful, under the commodities clause of the Interstate Commerce Act, as added to the Hepburn Act of June 29, 1906 (34 Stat., 585). *U. S. v. Reading Co.* 226 F., 282. 6—869

COMMON CARRIERS.

1. Discrimination Made by, in Through Route Agreements, May Violate Sherman Law.—An agreement between connecting railway and steamship carriers and a wharfage company to establish a through route and joint rates for transportation between Puget Sound and Yukon River points, to refuse to make such arrangements with other connecting carriers, and to charge high local rates and discriminating wharfage charges—all with the intent and result of eliminating all competition, violates the prohibitions of the Sherman Law against combinations or conspiracies in restraint of interstate or foreign trade or commerce, or the monopolization of, or attempt to monopolize, any part of such trade or commerce. *U. S. v. Pacific & Arctic R. & N. Co.*, 57 L. Ed., 742. 5—230

2. Same—Discriminations Practiced by, Can Not Be Redressed by Courts in Advance of Action by Interstate Commerce Commission.—Discriminations practiced by carriers in the giving or refusing of joint traffic arrangements contrary to the Act to Regulate Commerce can not be redressed by the courts in either a criminal or civil proceeding in advance of action by the Interstate Commerce Commission. *Ib.* 5—231

See also CARRIERS.

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COMMON LAW.

1. There is no Federal common law distinct from the common law of the States. *United Copper Sec. Co. v. Amalgamated Copper Co.*, 232 F., 577. 6—448
2. Common-Law Offenses—Definitions.—There are no common-law offenses against the United States, and the offenses cognizable in the Federal courts are only such as the Federal statutes define, provide a punishment for, and confer jurisdiction to try; but when Congress adopts or creates a common-law offense the courts may properly look to the common law for the true meaning and definition thereof, in the absence of a clear definition in the act creating it. *In re Greene*, 52 F., 104. 1—55
3. Common-Law Offense Adopted by Congress—Presumption—Interpretation.—Where Congress adopts or creates a common-law offense, and in doing so uses terms which have acquired a well-understood meaning by judicial interpretation the presumption is that the terms were used in that sense, and courts may properly look to prior decisions interpreting them for the meaning of the terms and the definition of the offense where there is no other definition in the act. *U. S. v. Trans-Mo. Ft. Assn.*, 58 F., 58. 1—186
Case reversed, 166 U. S., 290 (1—648).
4. Common-Law Rule.—The ground on which certain classes of contracts and combinations in restraint of trade were held illegal at common law was that they were against public policy. *Ib.* 1—198
5. Public Policy—How Determined.—The public policy of the Nation must be determined from its Constitution, laws, and judicial decisions. *Ib.* 1—200
6. Railroad Companies—Arrangements for Through Billing.—There is no principle of common law which forbids a single railroad corporation, or two or more of such corporations, from selecting, from two or more other corporations, one which they will employ as the agency by which they will send freight beyond their own lines, on through bills of lading, or as their agent to receive freight, and transmit it on through bills to their own lines, and without breaking bulk; and the right to make such selection is not taken away by the Interstate Commerce Law. *New York & N. Ry. Co. v. New York & N. E. R. Co.*, 50 F., 867, explained. *Prescott & A. C. R. Co. v. Atchison, T. & S. F. R. Co.*, 73 F., 438. 1—604
7. Prepayment of Freight.—A common carrier engaged in interstate commerce may at common law, and under the Interstate Commerce Law, demand prepayment of freight charges, when delivered to it by one connecting carrier, without exacting such prepayment when delivered by another con-

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13. **Third Person No Right of Action for Damages Because of Unlawful Combination.**—At common law a third person had no right of action for damages because of an agreement or combination in restraint of trade. *Paine Lumber Co. v. Neal*, 212 F., 285. 5—441
14. **Same—In Suit to Restrain Enforcement of Agreement, not Sufficient at Common Law to Show Agreement May Be in Restraint of Trade, etc.**—In a suit to restrain the enforcement of an agreement in restraint of trade, it is not sufficient at common law to show that an agreement may create a monopoly, may be in restraint of trade, or may be opposed to public policy, since, agreements of that nature being unenforceable, the law will not aid their enforcement, but they are not illegal in the sense of giving a right of action to third persons for injuries sustained. *Ib.* 5—441

COMPETITION.

1. **Is the striving for something which another is actively seeking and wishes to gain.** *U. S. v. Union Pacific R. R. Co.*, 228 U. S., 87. 4—676
2. **It Includes Making of Rates, Character of Service, and Accommodation Afforded.**—Competition between two transcontinental railway systems such as the Union Pacific and Southern Pacific includes not only making of rates but the character of service rendered and accommodation afforded; and the inducement to maintain points of advantage in these respects is greater when the systems are independent than when the corporation owning one of the systems also dominates and controls the other. *Ib.* 4—676
3. **Consolidation of Competing Railways Abridges Free Competition.**—The Union Pacific and Southern Pacific are competing systems of interstate railways and their consolidation by the control of the latter by the former through a dominating stock interest does, as a matter of fact, abridge free competition, and is an illegal restraint of interstate trade under the Sherman Law. *Ib.* 4—677
4. **In this case held, that while there was a great deal of non-competitive business, a sufficiently large amount of competitive business was affected to clearly bring the combination made within the purview of the Sherman Law.** *Ib.* 4—678
5. **While the Law May Not Compel, It May Remove Barriers which Make it Impracticable.**—While the law may not compel competition, it may remove illegal barriers resulting from illegal agreements, which make competition impracticable. *U. S. v. Reading Co.*, 228 U. S., 369. 4—735
6. **Elimination of, Between Competing Companies, if Illegal, Immaterial How Effected.**—The elimination of competition between competing concerns, if illegal, is equally so, whether effected

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conspirator shall know of all the means to carry out the purpose of the conspiracy. *Lawlor v. Loewe*, 209 F., 725.

5—405

4. Conspiracy Defined.—A conspiracy is a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means. *Mitchell v. Hitchman Coal & Coke Co.*, 214 F., 708. 5—623
5. Conspiracy Defined.—A conspiracy is a partnership in criminal purposes brought about by an agreement, and so long as the partnership continues the conspiracy continues, whether anything is done in furtherance of it or not. *Patterson v. U. S.*, 222 F., 631. 5—108
6. Conspiracy Defined.—A conspiracy is a combination of two or more persons by concerted action to do an unlawful thing, or to do a lawful thing in an unlawful manner. *Alaska S. S. Co. v. Inter. Longshoremen's Ass'n*, 236 F., 969. 6—680
7. When a Combination May Constitute.—A combination to effect an unlawful object through lawful means may constitute a criminal conspiracy. *U. S. v. Rintelen*, 233 F., 799. 6—532
8. The term "conspiracy," in section 1 of the Sherman Law, is used in its well-settled legal meaning, and any restraint of trade or commerce, if to be accomplished by conspiracy, is unlawful. *U. S. v. Debs*, 64 F., 724. 1—822
9. The word "conspiracy," as used in the Sherman Law, has substantially the same meaning as the word "contract." *U. S. v. Kissel*, 173 F., 825. 3—749
10. Conspiracy More Than a Contract.—A conspiracy in restraint of trade is more than a contract in restraint of trade; the latter is instantaneous, but the former is a partnership in criminal purposes and as such may have continuance in time; and so held in regard to a conspiracy made criminal by the Sherman Law. *U. S. v. Kissel*, 218 U. S., 608. 3—823
11. Conspiracy, When Completed.—The common-law offense of conspiracy is completed when the unlawful conspiracy is entered into, and proof of overt acts is unnecessary. *U. S. v. Rintelin*, 233 F., 797. 6—530
12. Persons Who Conspire to Restrain Trade Are Guilty, Though No Overt Acts Are Committed.—Under section 1 of the Sherman Law, persons who conspired to restrain trade between the United States and foreign nations, are guilty, though no overt acts were committed; such conspiracy being governed by the rules applicable to common-law conspiracy, which made the unlawful conspiring the gist of the offense. *Ib.* 6—526
13. Is Complete Under the Sherman Law, When Entered Into, Though Overt Act Not Committed.—A violation of the Sherman Law is complete where a conspiracy to do acts in re-

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- straint of trade is entered into, though no overt act is committed. *U. S. v. Bopp*, 237 F., 285. 6—708
14. Same—Under Section 37, Criminal Code, Is Not Completed Until an Overt Act Is Committed.—The offense denounced by section 37 of the Criminal Code declaring that if two or more persons conspire to commit any offense against the United States or to defraud the United States, and one or more of such parties do any act to effect the object of the conspiracy, each shall be punished, is not completed until an overt act is committed. *Ib.* 6—708
15. Conspiracy to Commit Offenses Against the United States—Revised Statutes, Section 5440.—The statute relating to conspiracies to commit offenses against the United States (Rev. Stat., sec. 5440) contains three elements, which are necessary to constitute the offense. These are: (1) The act of two or more persons conspiring together; (2) to commit any offense against the United States; (3) the overt act, or the element of one or more of such parties doing any act to effect the object of the conspiracy. *U. S. v. Cassidy*, 67 F., 702. 1—455
16. At Common Law, Overt Act Not Necessary.—While at common law it was not necessary to aver or prove an overt act in furtherance of a conspiracy, yet, under the statute relating to conspiracies to commit an offense against the United States, the doing of some act in pursuance of the conspiracy is made an ingredient of the crime, and must be established as a necessary element thereof, although the act may not be in itself criminal. *U. S. v. Thompson*, 31 F., 331, 12 Sawy., 155, cited. *Ib.* 1—459
17. Same.—It is not necessary, however, to a verdict of guilty that the jury should find that each and every one of the overt acts charged in the indictment was in fact committed; but it is sufficient to show that one or more of these acts was committed, and that it was done in furtherance of the conspiracy. *Ib.* 1—464
18. Under Sherman Law, Overt Act Not Necessary.—To constitute the offense of conspiracy in restraint of interstate or foreign commerce, or to monopolize such commerce, under the Sherman Law, unlike a conspiracy to commit an offense against or to defraud the United States, under Rev. St. § 5440, no overt act is necessary; the conspiracy itself being the offense. *U. S. v. Hissel*, 173 F., 825. 3—747
19. Conspiracy as Distinct Offense.—The law regards the act of unlawful combination and confederacy as dangerous to the peace of society, and declares that such combination and confederacy to commit crime requires an additional restraint to those provided for the commission of the crime itself. It therefore makes criminal the conspiracy itself, with pen-

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therance thereof which are in themselves lawful. *Tri-City Trades Council v. American Steel Foundries*, 238 F., 732.

6—918

58. Only Those Which Are Unreasonably in Restraint of Trade and Commerce Are Covered by the Sherman Law.—The Sherman Law declaring illegal every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations covers only contracts, combinations, and conspiracies which are unreasonably in restraint of interstate trade or commerce, though possibly every conspiracy is unreasonably in restraint thereof, on the theory that there can be no reasonable conspiracy, or conspiracy to do a reasonable thing. *Patterson v. U. S.*, 222 F., 618.

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59. Between Competitors, or Between Officers of One Competitor Against Another Are Covered by the Sherman Law.—The Sherman Law includes conspiracies between competitors, or between the officers and agents of one competitor, on its behalf, against another competitor, and also includes conspiracies between any persons against any other person. *Ib.*

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60. Conspiracy to Injure in Business.—The action of an association of manufacturers in adopting a resolution denouncing a dealer in the product they manufactured, who bought and shipped such product to customers in other States and foreign countries, and in printing such resolution in circulars, and mailing the same to other manufacturers and customers of the dealer, whereby his business was injured, constituted an illegal combination or conspiracy in restraint of interstate and foreign commerce, and gives the person injured a right of action in a circuit court of the United States, under the Sherman Law, to recover the damages sustained. *Gibbs v. McNeeley*, 102 F., 594.

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See also STATUTES, 102.

61. Same—To Run a Corner in Cotton, Within Terms of Sherman Law.—A conspiracy to run a corner in the available supply of a staple commodity, such as cotton, nominally a subject of interstate trade and commerce, to be accomplished by purchase for future delivery, coupled with a withholding from sale for a limited time, thereby enhancing artificially its price to all buyers throughout the country, is within the terms of the Sherman Law, which makes it a criminal offense to engage in a conspiracy in restraint of interstate commerce, since by its necessary operation it will directly and materially impede and burden such commerce. *U. S. v. Patton*, 57 L. Ed., 333.

4—757

62. Powder Trust—The Mere Fact that a Majority of Stock of One Company is Owned by Another Did Not Alone Show Con-

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2. The constitutional freedom of contract as to the use and management of property does not include the right of railroad companies to combine as one consolidated and powerful association for the purpose of stifling competition among themselves, and of thus keeping their rates and charges higher than they might otherwise be under the laws of competition, even if their rates and charges are reasonable. *U. S. v. Joint Traffic Assn.*, 171 U. S., 505. 1—809
3. Legislation which renders unlawful contracts, the direct effect of which is to shut out from interstate commerce the operation of the general law of competition, is not an interference with the general liberty of contract possessed by the citizen under the fifth amendment to the Constitution. *Ib.* 1—929
4. The constitutional guaranty of liberty of the individual to enter into private contracts does not limit the power of Congress so as to prevent it from legislating upon the subject of contracts in restraint of interstate or foreign commerce. *Ad-dystone Pipe & Steel Co. v. U. S.*, 175 U. S., 211. 1—1009
5. The provision in the Constitution regarding the liberty of the citizen is to some extent limited by the commerce clause; and the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially, and not merely indirectly, remotely, incidentally, and collaterally, regulate, to a greater or less degree, commerce among the States. *Ib.* 1—1024
6. Constitutional Right of Private Contract Limited by Interstate Commerce Clause.—The constitutional guaranty of liberty to the individual to enter into private contracts is limited to some extent by the commerce clause of the Constitution, and Congress may, in the exercise of the power conferred by such clause, prohibit private contracts which operate to directly and substantially restrain interstate commerce. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—215
7. The constitutional guaranty of liberty of contract does not prevent Congress from prescribing the rule of free competition for those engaged in interstate and international commerce. *Northern Securities Co. v. United States*, 193 U. S., 197. (Harlan, Brown, McKenna, Day.) 2—340
8. Same.—The constitutional guaranty of liberty of contract is not infringed by a Federal court decree enjoining the Northern Securities Co., a corporation formed in pursuance of a combination of stockholders in two competing interstate railway companies for the purpose of acquiring a controlling interest in the capital stock of such companies, from exercising the powers acquired by such corporation by virtue of its acquisition of such stock. (48 L. ed., 679.) 2—342

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by them. Such contract was signed by 80 per cent of the jobbers in the United States, and bound them to purchase only from some one of the 16 manufacturers, and to sell only at prices named in their resale price lists. *Held*, that such contracts entered into by the manufacturers were solely for the purpose of fixing prices and destroying competition, and constituted a combination in restraint of interstate commerce, and an attempt to monopolize such commerce, which was unlawful, as in violation of Sherman Law. *U. S. v. Standard Sanitary Mfg. Co.*, 191 F., 182. 4—409

55. **Illegality of Contract Defense to Action for Recovery of Price of Wall Paper Sold.**—Plaintiff corporation formed an illegal combination of manufacturers and wholesalers of wall paper in the United States, which constituted a restraint of interstate commerce, and a violation of the Sherman Law. Under the contract between plaintiff and the manufacturers, plaintiff was the nominal seller of all the wall paper manufactured by the combination, though it was actually purchased from various jobbers or mills within the combination. Defendants, wholesalers of wall paper, having been compelled to enter the combination and agree to purchase and sell wall paper in accordance with the monopolistic terms of the contract, purchased paper from various members of the combine, for which plaintiff brought suit. *Held* that, since plaintiff was bound to rely on the combination contract to show its capacity to sue, the illegality thereof constituted a defense to the action. *Continental Wall Paper Co. v. Voight & Sons Co.*, 148 F., 950. 3—60

56. **Contract in Restraint of Trade Unenforceable.**—Where a contract for the sale of a business in which defendant was formerly a partner provided for the organization of complainant corporation in order that another corporation, which was practically a trust, organized to monopolize the business in which complainant was engaged, and declared that for a specified period defendant should not enter into a competing business, after which, and as a part of the arrangement, the trust corporation acquired a monopoly of the business in the United States and stifled competition, the contract was in violation of the Sherman Law, to prevent unlawful restraints and monopolies, and was therefore unenforceable. *McConnell v. Camors-McConnell Co.*, 152 F., 331. 3—200

57. **Sale of Business and Good Will.**—The sale of a business and the good will pertaining to it, and an agreement, within reasonable limitations as to time and territory, not to enter into competition with the purchaser, when made as a part of the sale of the business, and not as a device to control commerce, is not within the Sherman Law, but such act

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renders unlawful every contract, combination, or conspiracy which directly or necessarily operates in restraint of trade between the States without regard to the form which the transaction takes. *Darius Cole Transp. Co. v. White Star Line*, 186 F., 65. 4—37

58. Same—Lease of Vessel.—Libelant and respondent were both owners of steamers running regularly between Detroit and Toledo, and for a number of years had operated under a pooling arrangement which gave them a monopoly. At the expiration of such arrangement libelant sold one of its boats and leased the other to respondent for a term of three years to be run between such two points, and at the same time transferred its good will, and agreed not to engage in competition during the term. The rental reserved was more than the steamer could have earned operated independently. *Held*, on the evidence, that the dominant purpose of the parties was to enable respondent to maintain its monopoly of the business, and that the lease was void as in violation of the Sherman Law, and rent could not be recovered thereon. *Ib.* 4—38

59. Restraint Must Be Direct and Substantial in Character.—To bring any transaction within the condemnation of the Sherman Law, it must be a contract, combination, or conspiracy in restraint of international or interstate commerce, and this restraint must be substantial in character and the direct and immediate effect of the transaction complained of. *U. S. v. Union Pacific R. Co.*, 188 F., 109. 4—313

60. Same—To Strangle Competition by Preventing Construction of Competing Railway.—A contract to strangle a threatened competition, by preventing the construction of an immediately projected line of railway, which, if constructed, would naturally and substantially compete with an existing line for interstate traffic, is one in restraint of interstate commerce, and in violation of the Sherman Law. *Ib.* 4—324

61. Illegality of Contracts—Restraint of Competition.—Where the necessary effect of an agreement between manufacturers is clearly to restrain interstate trade within the purview of the Sherman Law, it can not be taken out of the category of the unlawful by general reasoning as to its expediency or non-expediency or the wisdom or want of wisdom of the statute. *U. S. v. Standard Sanitary Mfg. Co.*, 191 F., 182. 4—410

62. The prohibitory provisions of the Sherman Law apply to all contracts in restraint of interstate or foreign trade or commerce, without exception or limitation, and are not confined to those in which the restraint is unreasonable. *Ware-Kramer Tobacco Co. v. American Tobacco Co.*, 180 F., 165. 3—787

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plaintiff in an action brought under that section to recover damages for a violation of the provisions of that act against combinations in restraint of trade is not abused by an allowance of \$750, although the verdict was but for \$500, where the trial took five days, and from the proof offered it appeared that from \$750 to \$1,000 would be a reasonable sum. *Montague v. Lowry*, 193 U. S., 38. 2—329

2. **Costs—When Awarded Against All Defendants.**—Where some of a large number of defendants to a bill in equity demurred to the bill and from a decree dismissing it the complainant appealed and other of the defendants entered their appearance in this court and were heard in support of the decree, this court, in reversing the decree, awarded costs against all of the defendants appearing in this court. *Leonard v. Abner-Drury Brewing Co.*, 25 App. (D. C.) Cases, 161. 2—18

COUNTERCLAIM.

Legal Demand Can Not Be Pleaded as, in an Equity Suit.—A legal demand can not be pleaded as a set-off or counterclaim in an equity suit, but under new equity rule 30, it must be a demand "which might be the subject of an independent suit in equity." *Motion Picture Patents Co. v. Eclair Film Co.*, 208 F., 418. 5—346

COURTS.

I. FEDERAL COURTS IN GENERAL—JURISDICTION AND POWER.

1. **Jurisdiction Over Non-Resident Defendants in Private Suits.**—The authority given by section 5 of the Sherman Law, to bring in non-residents of the district can not be availed of in private suits, and the court can not acquire jurisdiction over them. *Greer, Mills & Co. v. Stoller*, 77 F., 1. 1—620
2. **Power to Bring in Non-Resident Defendants.**—Where one of the defendants in a suit, brought by the Government in a circuit court of the United States under the authority of section 4 of the Sherman Law is within the district, the court, under the authority of section 5 of that act, can take jurisdiction and order notice to be served upon the non-resident defendants. *Standard Oil Co. v. U. S.*, 221 U. S., 46. 4—118
3. **Jurisdiction in Private Suits Against a State for Violation of Sherman Law—Necessary Parties.**—Where a person brings an action under section 7 of the Sherman Law against the officials of a State to recover damages for acts done under authority of a State statute which gives the State an entire monopoly of the traffic in intoxicating liquors (act S. C., Jan. 2, 1895), the State itself is a necessary party thereto, and consequently the Federal courts would have no jurisdiction of the action. *Loewenstein v. Evans*, 69 F., 908. 1—598
4. **Court of Equity Can Not Entertain Bill of Private Party to Enforce Sherman Law.**—The Sherman Law does not authorize a court of equity to entertain a bill by a private party

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- ing to realize the fruits of an illegal contract, and, while this may at times result in relieving a purchaser from paying for what he has had, public policy demands that the court deny its aid to carry out illegal contracts without regard to individual interests or knowledge of the parties. *Continental Wall Paper Co. v. Voight*, 212 U. S., 262. 3—513
18. **Same—Effect of Refusal.**—The refusal of judicial aid to enforce illegal contracts tends to reduce such transactions. *Ib.* 3—514
19. **Nature of Relief to Be Granted.**—Where an existing combination in corporate form has been adjudged unlawful, as in violation of the Sherman Law, and to have monopolized and to be monopolizing a large part of the interstate trade in a particular commodity it is the duty of the court, under the power conferred by section 4 of the act to "prevent and restrain" its violation, not only to enjoin further violation of the act, but to render its decree effective by dissolving the illegal combination. *U. S. v. du Pont, etc., Co.*, 188 F., 153. 4—377
20. **When Ordinary Jurisdiction of Equity Not Impaired.**—The fact that the Sherman Law makes a conspiracy in restraint of trade a crime, and provides a penalty therefor, does not necessarily impair the ordinary jurisdiction of equity, where the criminal acts work irreparable injury to property. The statute does not substitute its remedy for others which existed before its enactment. *Ib.* 3—17
21. **Same.—Quære.**—Whether if the wrongs complained of by an individual, growing out of alleged acts in restraint of trade in the District of Columbia, as distinguished from acts relating to conspiracies in restraint of interstate commerce, should be remediless save by a resort to the Sherman Law, any party other than the United States can invoke the jurisdiction of equity to restrain their commission. *Ib.* 3—17
22. **Courts of Equity—Power to Compel Production of Books and Papers.**—A court of equity has power to compel the production of books and papers by virtue of its inherent and general jurisdiction, and this power is not confined to the parties to the suit, but extends to third persons. *U. S. v. Terminal R. Ass'n, etc.*, 148 F., 488. 3—38
23. **Will Not Review Competency of Evidence Before Grand Jury on Motion to Quash.**—Except in States having statutes on the subject, courts will not review the evidence received by a grand jury on a motion to quash, for the purpose of passing on its competency. *U. S. v. Swift*, 186 F., 1018. 4—76
24. **Jurisdiction of Federal Courts.**—A suit based on an alleged violation of Sherman Law whereby direct and special injuries are inflicted on and threatened to the complainants is one arising under a law of the United States of which a

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Federal court has jurisdiction regardless of the citizenship of the parties. *Mannington v. C., H. V. & T. Ry. Co.*, 183 F., 140. 3—835

25. **Suit Involving Rights of Stockholders.**—Where it is claimed that one corporation can not under the statute lawfully own the stock of another a court can not, in a suit to which such stockholding corporation is not a party, adjudge the constitution of the board of directors of the corporation issuing the stock illegal on the ground that certain of its stock was held and voted at the corporate election by such stockholding corporation. *Ib.* 3—847
26. **Acts of Foreign Government.**—Where Costa Rica was de facto sovereign over that part of Panama, including the McConnell concession, at the time plaintiff's plantation and railroad in such concession was injured by the acts of the Costa Rican soldiers and officers acting under governmental authority, such acts were immune from investigation or review by the courts of the United States. *American Banana Co. v. United Fruit Co.*, 166 F., 266. 3—570
27. **District in Which Suit Must Be Brought.**—An action against a corporation in a Federal court for a common-law tort can be maintained only in the district of plaintiff's residence or that in which defendant is incorporated, and such requirement can not be avoided by joining in the same complaint another count stating an entirely separate cause of action of which the court has jurisdiction nor by stating a joint cause of action against such defendant and another which is an inhabitant of the district and may be there sued, the cause of action being several as well as joint. *Ware-Kramer Tobacco Co. v. American Tobacco Co.*, 178 F., 120. 3—770
28. **The question whether a suit in a Federal court is maintainable in the district where brought,** under the statute, may be raised either by motion to set aside the service of process or by special demurrer, where a special appearance is made for that purpose only, and before pleading to the merits; but the right is waived by filing a general demurrer or pleading to the merits. *Ib.* 3—770
29. **Congressional Power to Authorize Their Process to Run Outside Their District.**—In a case at law or in equity which arises under the Constitution or laws of the United States, and a suit by the United States under the Sherman Law, presents such a case, Congress is authorized by article 3, §§ 1, 2, of the Constitution to confer upon any national court jurisdiction to summon the proper parties to the suit to a hearing and decree wherever they reside or are found within the dominion of the Nation, although beyond the limits of the district of the court. *U. S. v. Standard Oil Co.*, 152 F., 293. 3—178

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30. District Where Suit to Be Brought—Restriction to Inhabitants of District Inapplicable Where Jurisdiction Conferred by Special Acts.—The inhibition of section 1 of the judiciary acts of 1887 and 1888 (act Mar. 3, 1887, c. 373, 24 Stat., 552, and act Aug. 13, 1888, c. 866, 25 Stat., 433) that "no suit shall be brought before either of said courts [the circuit and district courts] against any person by any original process or proceeding in any other district than that whereof he is an inhabitant," is ineffective and inapplicable in instances in which exclusive jurisdiction over particular cases or classes of cases has been conferred upon the Federal court by special acts of Congress. *Ib.* 3—178
31. A case can not, under existing statutes regulating the jurisdiction of the courts of the United States, be removed from a State court, as one arising under the Constitution or laws of the United States unless the plaintiff's complaint, bill, or declaration shows it to be a case of that character. *Minnesota v. Northern Securities Co.*, 194 U. S., 64. 2—548
32. While an allegation in a complaint filed in a circuit court of the United States may confer jurisdiction to determine whether the case is of the class of which the court may properly take cognizance for purposes of a final decree on the merits, if notwithstanding such allegation, the court finds, at any time, that the case does not really and substantially involve a dispute or controversy within its jurisdiction then, by the express command of the act of 1875, its duty is to proceed no further. And if the suit, as discussed by the complaint could not have been brought by plaintiff originally in the circuit court, then, under the act of 1887–88 it should not have been removed from the State court and should be remanded. *Ib.* 2—549
33. A State can not, by a suit in its own name, invoke the original jurisdiction of a Federal circuit court to restrain and prevent violations by competing interstate railway companies, of the Sherman Law, because, alone, of the alleged remote and indirect injury to its proprietary interests arising from the mere absence of free competition in trade and commerce as carried on by such carriers within its limits. *Ib.* 2—553
34. Article IV of the Constitution of the United States only prescribes a rule by which courts, Federal and State, are to be guided when a question arises—in the progress of a pending suit as to the faith and credit to be given by the court to the public acts, records, and judicial proceedings of a State, other than that in which the court is sitting. It has nothing to do with the conduct of individuals or corporations. *Ib.* 2—554
35. Allegation of Amount in Controversy.—It is not essential that a bill in a Federal court should state the amount or value in

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controversy, if it appears to be within the jurisdictional limit, from the allegations of the bill, or otherwise from the record, or from evidence taken in the case before the hearing of objections to the jurisdiction. *Robinson v. Suburban Brick Co.*, 127 F., 804. 2—812

36. **Abatement—Pendency of Action in State Court.**—The pendency of a suit in a State court is not a bar to one on the same cause of action in a Federal court. *Ib.* 2—818

37. **Production of Documents.**—The search and seizure clause of the Fourth Amendment was not intended to interfere with the power of courts to compel the production upon a trial of documentary evidence through a *subpoena duces tecum*. *Hale v. Henkel*, 201 U. S., 43. 2—874

See also SEARCH, and WITNESSES.

38. **Orders of a Federal circuit court directing witnesses to answer the questions put to them and produce written evidence in their possession on their examination before a special examiner appointed in a suit brought by the United States to enjoin an alleged violation of the Sherman Law, is interlocutory in the principal suit, and therefore not appealable to the Supreme Court. An appeal does lie, however, from a judgment of contempt, attempting to enforce the order.** *Alexander v. United States*, 201 U. S., 117. 2—945

See also *Nelson v. United States*, 201 U. S., 92 (2—920).

39. **Admission of Evidence—Order of Proof.**—In an action to recover damages for an alleged conspiracy in restraint of interstate commerce, it was within the discretion of the trial court to admit evidence of acts and declarations of various of the defendant associations, their officers, committees, members, and agents, made in the absence of many of the other defendants, before a *prima facie* case of conspiracy had been established, and before privity of some of the defendants had been proven, on condition that such connecting evidence should be thereafter given. *Loder v. Jayne*, 142 F., 1010. 2—977

40. **In Determining Questions Arising under the Anti-Trust Acts the Federal Courts Will Exercise an Independent Judgment, Unaffected by Decisions of State Courts.**—Congress having undertaken by the Anti-Trust Acts to deal with monopolies affecting interstate commerce, and having conferred jurisdiction of questions arising thereunder on the Federal courts, in determining such questions those courts exercise an independent judgment, unaffected by the decisions of the courts of the State. *Skaggs v. Kansas City Term. Ry. Co.*, 283 F., 829. 6—536

41. **Same—Only the Decisions of the Highest Court of a State Are Binding on the Federal Courts.**—It is only the highest court

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against all competitors extending over a period of 20 years, which as the various competitors named in the indictment came into existence was directed against them, there was evidence to make a question for the jury as to a conspiracy within the period of limitations only as against the A. Company, and only with respect to certain of the means of accomplishing the objects of the conspiracy set forth in the indictment, evidence that the defendants were parties to a generic conspiracy of the character mentioned, and that they conspired in restraint of competitors named who ceased to exist before the A. Company was organized, by the use of means other than those shown to have been employed against the A. Company within the period of limitations, was admissible as bearing on the question whether there was a conspiracy against the A. Company when it came into existence, which continued into the period of limitations. *Ib.*

5—106

48. Same—Evidence of Means Employed to Accomplish Object of Conspiracy, Admissible to Show the Conspiracy Included Such Means, etc.—Where such indictment alleged that to accomplish the objects of the conspiracy defendants induced, hired, and bribed employees of the N. Company's competitors to disclose the secrets of such competitor's business, and hired and bribed employees of carriers, etc., to disclose the secrets of their employers relative to the transportation of cash registers for such competitors, and instructed and required the N. Company's sales agents to ascertain and report all facts pertaining to the business of such competitors, though these acts were not calculated in themselves to restrain the trade or commerce of any competitor, their sole function being to enable defendants to use other means calculated to restrain such trade, evidence to show that the conspiracy included such means was admissible, and to be considered by the jury as bearing on the further question whether the conspiracy also included effective means of restraining such trade and commerce. *Ib.*

5—108

49. Same—On Trial for Conspiracy and Monopoly, Held Evidence Sufficient to Submit Case to Jury, Whether Conspiracy Extended into the Three-Year Period.—On a trial for conspiring in restraint of interstate commerce, evidence held to make a question for the jury as to whether there was a conspiracy extending over a great many years on the part of such officers and agents of a corporation as had to do with competition to restrain and destroy the interstate trade of such company's competitors, whether such conspiracy was by the use of certain of the means specified in the indictment directed against the A. Company when it came into existence, and

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bought cash registers from a competitor and resold them to discontinue the business by threats of interference, and evidence of a similar transaction more than three years prior to the indictment, did not make a question for the jury as to a conspiracy with respect to the business of that competitor. *Ib.* 5—124

53. Same—Of Acts Within Three-Year Period Against Other Competitors Not Sufficient for Jury, Did Not Tend to Prove Conspiracy Against A. Company, and Was Incompetent.—On a trial of the officers and agents of the N. Company under an indictment charging a conspiracy in restraint of the interstate trade of the N. Company's competitors, directed against the various competitors as they came into existence, on which it was claimed that the conspiracy had existed within the period of limitations as against the A. Company, evidence as to acts directed against other competitors within the three years, but not sufficiently tending to establish a conspiracy against them to make a question for the jury, did not tend to establish a conspiracy against the A. Company, and should not have been admitted. *Ib.* 5—125

54. Same—Of Acts Against Other Competitors Tending to Show a Generic Conspiracy Against All, and Bearing on the Character of the Conspiracy, Admissible.—On such trial, though there was a question for the jury only as to the conspiracy charged within the period of limitations as against the A. Company, evidence as to acts directed against other competitors tending to show a generic conspiracy against all competitors, and bearing on its fixed and absolute character and on its nature otherwise, was admissible, though relating in some instances to matters occurring in the early part of the 20 years during which the conspiracy was claimed to have existed. *Ib.* 5—125

55. Same—Though the Only Question for the Jury Was Whether Within the Three Years the Conspiracy Was Directed Against the A. Company, Evidence of the Use of Other Means Against Other Companies Not Then in Existence, Admissible to Prove Generic Conspiracy.—Under an indictment charging a generic conspiracy on the part of the officers and agents of the N. Company engaged in manufacturing and selling cash registers, in restraint of the interstate trade of all competitors of the N. Company, sought to be carried out by the means therein specified, though the only question for the jury under the evidence was whether such conspiracy within the period of limitations was directed against the A. Company by the use of certain of the means specified, evidence as to the use of other means not specified in the indictment against other competitors, who ceased to exist before the competitor in question was organized, was admissible to establish that the

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HABEAS CORPUS.

1. Removal of Prisoner—Jurisdiction of Circuit Courts.—Where a prisoner, arrested under warrant based upon an indictment in a distant State and district, is held pending an application to the district court for a warrant of removal for trial, the circuit court of the district in which he is held has authority on *habeas corpus* to examine such indictment and to release the prisoner, if in its judgment the indictment should be quashed on demurrer. *In re Terrell*, 51 F., 213.

1—46

2. Same.—On *habeas corpus* to release a person held under a warrant of a United States commissioner to await an order of the district judge for his removal to another district to answer an indictment, it is the right and duty of the circuit court to examine the indictment to ascertain whether it charges any offense against the United States, or whether the offense comes within the jurisdiction of the court in which the indictment is pending. *In re Greene*, 52 F., 104.

1—54

3. Witness—Contempt—Incriminating Evidence.—Where a witness is committed for contempt in refusing to answer all of a series of questions, for the reason that the answers would tend to criminate him, and some of the answers would have that tendency, he should not be denied relief on *habeas corpus* because some of the questions might be safely answered. *Foot v. Buchanan*, 118 F., 156.

2—104

4. Witness Committed for Contempt by One Judge Would Not Be Discharged by Habeas Corpus by Another Judge of Same Court.—Where a *subpoena duces tecum* was directed to be issued by a circuit judge, and the witness was committed for contempt for failure to obey the same, he would not be discharged on *habeas corpus* by another judge of the same court, though the latter was of the opinion that the subpoena authorized an unconstitutional search and seizure of private papers. *In re Hale*, 139 F., 496.

2—304

Order affirmed in *Hale v. Henkel*, 201 U. S., 43 (2—874).

5. Jurisdiction of Circuit Courts in Contempt Proceedings.—Where the circuit court has full jurisdiction, its findings as to the act of disobedience of its orders are not open to review on *habeas corpus* in the Supreme Court or any other court. *In re Debs*, 158 U. S., 564.

1—566

HATS. See COMBINATIONS, 253-255, 280, 281.

HOLDING COMPANIES.

To VOTE STOCK. See COMBINATIONS, ETC., 169-177, 336, 337.

To RECEIVE ASSIGNMENTS OF PATENTS. See COMBINATIONS, ETC., 178-181, 343.

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- 36. Same—Witness Having Been Subpoenaed, Gave Testimony Before the Interstate Commerce Commission, Under Threat of Punishment for Refusal to Testify; Held, to Be Within the Protection of the Statute.**—The act of February 11, 1893, provides that no person shall be excused from testifying before the Interstate Commerce Commission on the ground that his testimony may incriminate him and that he shall not be prosecuted on account of such testimony. Defendant was subpoenaed, and testified under oath before the Interstate Commerce Commission as to an attempt to create a monopoly of transportation facilities in violation of the Sherman Law, after being led to believe that immunity would be given, and under threats that the Commission would proceed criminally against any person testifying under a subpoena who refused to give evidence. The Commission had expressly refused immunity to others not sworn, and defendant had not conferred with counsel as to a possible waiver of immunity before testifying. He was subsequently indicted upon grounds as to which he had testified before the Commission. *Held*, that defendant was within the protection of the statute. *Ib.* 5—842

- 37. Witness Can Not Be Given, in Private Suit, so as to Bind Department of Justice.**—A witness, in a suit between private parties, can not be given immunity under the Federal statutes so as to bind the Department of Justice. *Great Eastern Clay Products Co.* (not Reported). 6—1042

IN PARI DELICTO. See SALE, 6, 7.

INCIDENTALLY, INDIRECTLY, OR REMOTELY. See COMBINATIONS, ETC., 31, 32, 264, 265, 267, 268, 269, 284, 287, 331, 352; CONGRESS, 7; STATUTES, 14, 15, 21, 106, 115.

INCITING STRIKE. See COMBINATIONS, ETC., 240–244.

INCRIMINATING EVIDENCE. See WITNESSES; IMMUNITY.

INDICTMENTS.

- 1. Failure to Allege that Defendants Monopolized or Conspired to Monopolize Trade and Commerce Among the Several States, etc.**—An indictment under section 2 of the Sherman Law, which fails to allege that defendants monopolized, or conspired to monopolize, trade and commerce among the several States, or with foreign nations, fails to state an offense, even though it does allege that they did certain acts with intent to monopolize the traffic in distilled spirits among the several States, and that they have destroyed free competition in such traffic in one of the States and increased the price of distilled spirits therein. *U. S. v. Greenhut*, 50 F., 469. 1—30
- 2. Failure to Charge a Crime.**—An indictment under the Sherman Law, relating to monopolies, averred that defendants in pursuance of a combination to restrain trade in distillery

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interstate commerce under the Sherman Law, the injunctive remedy covered by such act being available to the Government only, and the individual being only authorized to sue for and recover threefold damages. *Mitchell v. Hitchman Coal & Coke Co.*, 214 F., 714. 5—631

[But see section 16 of the Clayton Law.]

59. Private Party Can Not Maintain Suit for, Under Sherman Law.—

A private party can not maintain a suit for an injunction under section 4 of the Sherman Law. *Paine Lumber Co. v. Neal*, 244 U. S., 471. 6—963

60. Private Parties Can Obtain, Under Section 16 of the Clayton Law,

Against Threatened Loss.—While, under section 16 of the Clayton Law, private parties can obtain an injunction against threatened loss, that act, in terms, goes no further. *Fleitzmann v. Welsbach Street Lighting Co.*, 240 U. S., 29. 5—431

INSTRUCTIONS TO JURY.

1. Members of Labor Union Paying Their Dues and Continuing to Delegate Authority to Their Officers to Commit Unlawful Acts are Liable.—In an action against members of a trade union for conspiracy in aiding an effort to compel plaintiff to unionize his factory, the court charged that mere membership in a labor union and payment of dues did not amount necessarily to counseling, advising, aiding, or abetting in a conspiracy of the officers and members to destroy plaintiff's business, but that if the members paid their dues and continued to delegate authority to their officers and agents to commit unlawful acts which constituted an interference with plaintiff's interstate trade and commerce, under such circumstances as lead you to believe they knew or "ought to have known," and that such officers and agents were in that matter warranted in the belief, that they were acting within their delegated authority, then such members and no others were liable. *Held*, that the words "ought to have known," in connection in which they were used, were intended to mean only that the jury must be justified in drawing the conclusion that the defendants must have known of the existence of the conspiracy, and so construed did not render the instruction objectionable as misleading. *Lowlor v. Lowe*, 209 F., 727. 5—408

2. Same—Plaintiff May Recover Only for Acts Done Before Suit

Brought, Including Damages Resulting Therefrom After Suit Brought, Held Proper.—In an action for conspiracy in restraint of interstate commerce in violation of the Sherman Law, an instruction that the only acts for which plaintiff may recover are such as are alleged in the complaint and as were done by defendants or their agents before suit brought, and that plaintiffs were entitled to recover all damages which are the proximate and natural result of such acts, including such damages as may have continued or resulted there-

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among the States, is direct and not accidental or secondary as in *U. S. v. E. C. Knight Co.*, 156 U. S., 1. *Swift & Co. v. United States*, 196 U. S., 375. 2—641

12. When cattle are sent for sale from a place in one State, with the expectation they will end their transit, after purchase, in another State, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock-yards, and when this is a constantly recurring course, it constitutes interstate commerce and the purchase of the cattle is an incident of such commerce. *Ib.* 2—665

13. Although the jurisdiction of Congress over commerce among the States is full and complete, it is not questioned that it has none over that which is wholly within a State, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce; nor does it acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a State by reason of the fact that the combination also covers and regulates commerce which is interstate. *Addyston Pipe and Steel Co., v. U. S.*, 175 U. S., 211. 1—1009

14. **Kansas City Live Stock Association—Engaged in Interstate Commerce.**—Where the shipments of live stock from growers, dealers, and traders in various States and Territories to the defendants, the Kansas City Live Stock Association, was solicited by the latter chiefly through personal solicitation of traveling agents, and through advertisements, the course of business involving frequent loans to shippers in other States, secured by chattel mortgages on herds, and frequent drafts drawn by shippers on the defendants, and discounted at their local banks in other States on the strength of bills of shipment attached thereto, shipments being made to Kansas City, and the loans or drafts paid from proceeds of sale, and the balance remitted to the shippers, and sales at Kansas City were made for shipment to markets in other States, as well as for slaughter at packing houses near by, the traffic being of immense proportions, and defendants active promoters, and frequently interested parties, gathered in for sale and slaughter millions of cattle, sheep, and hogs; and their rules and regulations covered the entire business, and extended over the whole field of operation, *held*, that defendants were engaged in commerce between the States, and were subject to the provisions of the Sherman Law. *U. S. v. Hopkins*, 82 F., 529. 1—725

Reversed, 171 U. S., 578 (1—941).

15. **Same.**—Live stock shipped from various States to the yards of a stock-yards association in another State, by the solicitation and procurement of the members thereof, to be there sold or to be reshipped to other States, if the market should be

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individual competition in relation to interstate commerce, and to prevent combinations which restrain such competition between their members, or between such members as individuals and outside competitors. *U. S. v. Chesapeake & O. Fuel Co.*, 105 F., 93. 2—34

Affirmed, 115 F., 610 (2—151).

38. Policy of the Nation in Regard to.—It has been the public policy of this Nation, from the date of the passage of the Interstate Commerce Act of 1887, to regulate that part of interstate commerce which consists of transportation, and to so far restrict competition in freight and passenger rates between railroad companies engaged therein as shall be necessary to make such rates open, public, reasonable, uniform, and steady, and to prevent discriminations and undue preferences. *U. S. v. Trans-Missouri Freight Assn.*, 58 F., 58. 1—186

Decision reversed, 166 U. S., 290 (1—648).

39. The Sherman Law embraces and declares to be illegal every contract, combination, or conspiracy, in whatever form, of whatever nature, and whoever may be parties to it, which directly or necessarily operates in restraint of trade or commerce among the several States or with foreign nations. *Northern Securities Co. v. United States*, 193 U. S., 331. (Harlan, Brown, McKenna, Day.) 2—461

40. Combinations, even among private manufacturers or dealers, whereby interstate or international commerce is restrained, are equally embraced by the act. *Ib.* 2—461

41. Every combination or conspiracy which would extinguish competition between otherwise competing railroads, engaged in interstate trade or commerce, and which would in that way restrain such trade or commerce, is made illegal by the act. *Ib.* 2—462

42. Congress may, in the exercise of the power conferred upon it by the commerce clause of the Constitution, prohibit private contracts which operate directly and substantially to restrain interstate commerce. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—216

43. The power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially and not merely indirectly, remotely, incidentally, and collaterally regulate to a greater or less degree commerce among the States. *Addyston Pipe & Steel Co. v. United States*, 175 U. S., 211, 229. 1—1009

44. A State can not invest a corporation organized under its laws with the power to do acts in the corporate name which would operate to restrain interstate commerce. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—215

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States and in Connecticut, is engaged in interstate commerce, and as such is subject to the prohibitions of the Sherman Law, against restraints of trade and monopolies. *Ib.*, 57 L. Ed., 107. 4—650

51. Allegations in a Pleading That an Ice Company Is Engaged in Cutting Ice in One State and Selling It in Another not Sufficient to Show Company Is Engaged in.—Allegations that an ice company is engaged in cutting and harvesting ice in New Hampshire and transporting the same to Boston and selling it in Boston are not sufficient to show that the corporation is engaged in interstate commerce. *Corey v. Independent Ice Co.*, 207 F., 461. 5—334

52. Tugs Engaged in Towing Vessels Engaged in, Are Instrumentalities of.—Tugs employed in the business of towing into and out of harbors and between ports, vessels so engaged, are themselves instrumentalities of interstate commerce. *U. S. v. Great Lakes Towing Co.*, 208 F., 742. 5—360

53. Photo-Play Films Shipped from One State to Another, Are Subjects of.—Photo-play films, shipped from one State to another, are subjects of interstate commerce, and fall within the scope of the Sherman Law, prohibiting unreasonable and undue restraint of trade and commerce. *U. S. v. Motion Picture Patents Co.*, 225 F., 803. 6—200

54. The Transportation from State to State, of Stage Properties Belonging to Vaudeville Theaters, and of Performers, Constitutes Interstate Commerce.—Where vaudeville theaters were arranged in circuits, and it was the practice to book performances for the whole or part of one circuit under one contract, requiring them to pass from theater to theater and from State to State, taking with them certain paraphernalia and stage properties, certain aspects of the business of the theater owners and their booking agents constituted interstate commerce, as, for instance, the contracts under which the performers were to go from State to State, fulfilling their contracts as much by the travel as by the acting, the carriage of their stage properties and paraphernalia from one State to another, and the sending by the theaters themselves from State to State of scenery and advertising matter. *Marionelli, Lim. v. United Booking Offices*, 227 F., 167. 5—947

55. All Contracts Involving, Subject to Control of Congress.—All persons entering into contracts involving interstate commerce must do so subject to the right of Congress thereafter to control, regulate, or prohibit the performance thereof. *Blumett Machine Co. v. Center*, 227 F., 123. 5—942

56. Corporation Manufacturing and Leasing Machines for Manufacturing Shoes, etc., Is Engaged in.—The fact that every lease is not commerce is not conclusive that none may be, and where a large corporation, doing an interstate business

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amounting to millions of dollars annually in disposing of machinery which it manufactures, sees proper to lease instead of sell its machines, it is no less engaged in interstate commerce than it would be if it sold the machines, and its lease contracts are proper subjects of congressional regulation. *U. S. v. United Shoe Mach. Co.*, 234 F., 143. 5—818

POWER OF CONGRESS OVER. See CONGRESS.

PREPAYMENT OF FREIGHT. See CARRIERS.

See also CORPORATIONS, 2, 3; ACTIONS AND DEFENSES, 154, 155; and COMBINATIONS, ETC., generally, particularly paragraphs 124-146, 263-300.

IRON PIPE. See COMBINATIONS, ETC., 265.

JOINT RATES AND BILLING. See CARRIERS.

JOINT TRAFFIC ASSOCIATIONS. See COMBINATIONS, 190, 191, 344-347.

JUDGMENT.

General expressions in an opinion which are not essential to dispose of a case are not permitted to control the judgment in subsequent suits. *Harriman v. Northern Securities Co.*, 197 U. S., 244. 2—609

JURISDICTION.

1. In a suit instituted in the name of the United States, under the Sherman Law, jurisdiction depends alone upon the act, and the court is concerned with no case between private persons or corporations, where jurisdiction depends on other conditions, and in which proceeding a common-law remedy might become available. *U. S. v. Addyston Pipe & Steel Co.*, 78 F., 712. 1—631
2. Non-residents.—The authority given by section 5 of the Sherman Law to bring in non-residents of the district can not be availed of in private suits, and the court can acquire no jurisdiction over them. *Greer, Mills & Co., v. Stoller*, 77 F., 1. 1—620
3. Objection to of Court Is Waived by Party Appearing in a Suit.—By appearing in a suit in the Federal Circuit Court, defendants waived any objection that the suit was not brought in the district where plaintiffs or they reside. *Irving v. Joint Council of Carpenters, etc.*, 180 F., 898. 5—379
4. Supreme Court Never Shirks Duty of Maintaining Lines of Separation.—In determining questions of jurisdiction the Supreme Court never shirks the responsibility of maintaining the lines of separation defined in the Constitution and the laws made in pursuance thereof. *Henry v. A. B. Dick Co.*, 224 U. S., 13. 6—744
5. Same—Test of, in Suit Involving Patent Laws.—The test of jurisdiction is whether complainant does or does not set up a right, title or interest under the patent laws or make it

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error, in view of a painstaking trial and careful instructions upon the estimation of damages. *Ib.* 6—730

13. Federal Conformity Statute Does Not Cover Instructing.—The Federal conformity statute (Rev. Stat., sec. 914), providing for conforming the procedure in the Federal courts to that in the State courts in civil actions at law, does not cover instructing the jury. *Steers v. U. S.*, 192 F., 10. 4—440

See also WITNESSES; GRAND JURY.

LABOR UNIONS.

1. The employees of railway companies have a right to organize for mutual benefit and protection, and for the purpose of securing the highest wages and the best conditions they can command. They may appoint officers, who shall advise them as to the course to be taken in their relations with their employer, and they may, if they choose, repose in their officers' authority to order them, or any of them, on pain of expulsion from their union, peaceably to leave the employment because the terms thereof are unsatisfactory. But it is unlawful for them to combine and quit work for the purpose of compelling their employer to withdraw from his relations with a third party, for the purpose of injuring that third party. *Thomas v. Railway Co.*, 62 Fed., 817, followed. *U. S. v. Cassidy*, 67 F., 711. 1—467, 538
2. Same.—A strike, or a preconcerted quitting of work, by a combination of railroad employees, is, in itself, unlawful, if the concerted action is knowingly and willfully directed by the parties to it for the purpose of obstructing and retarding the passage of the mails, or in restraint of trade and commerce among the States. *Ib.* 1—538
3. Members of Have Right to Strike Peaceably But Not to Threaten Owners, etc.—Workingmen have the right to unite to protect themselves, and to strike peaceably for grievances, but not to threaten owners, builders, and architects that their contracts will be held up if they, or any of their sub-contractors, use another employer's products. *Irving v. Joint Council of Carpenters, etc.*, 180 F., 900. 5—383
4. Member of Who Joins in Making Unlawful Rule, Is Liable for Carrying It Out, Though Not Personally Participating Therein.—A member and officer of a labor organization, who joins with others in the adoption of a rule or regulation which is made a part of the organic law of the organization and binding on all its members under penalty of a fine, if such rule or regulation is unlawful as in restraint of trade, is liable for anything done to carry it out, although he does not personally participate therein. *Irving v. Neal et al.*, 209 F., 475. 5—392
5. Same.—Combination of Refusing to Work Where Non-Union Finish Is Used, if Interstate Trade Is Restrained, Is Unlawful—

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A combination between local unions of organizations of carpenters and joiners, by which their members are pledged to refuse to work on any job where trim or finish made in a non-union shop is used, is in restraint of trade and commerce, and, if it affects interstate commerce, is in violation of the Sherman Law, and it is immaterial that the combination is not directed against any particular concern or dictated by any malicious motive. *Ib.* 5—393

But see 244 U. S., 459.

6. **Contract Between a Company and a Labor Union Concerning Wages, etc., Not Objectionable as Tending to Monopoly.**—A contract between a manufacturing corporation and a labor union, by which the corporation thereafter agreed to pay union wages and to comply with the union hours of labor and conditions of employment, but which contained no direct provision binding the corporation not to employ non-union men, was not objectionable as tending to create a monopoly in favor of members of the unions to the exclusion of others seeking employment. *Post v. Bucks Stove & Range Co.*, 200 F., 921. 4—807

7. **Members of, Declaring Boycott on Goods of Manufacturer Shipped to Other States, Constituted Unlawful Combination, for Which Manufacturer Entitled to Damages.**—Where members of a labor union attempted to compel a hat manufacturer to unionize his factory, left his employment therein, and with the assistance of members of affiliated organizations declared a boycott on his goods in other States into which the goods had been shipped for sale at retail, such acts constituted a combination or conspiracy in restraint of interstate commerce in violation of the Sherman Law, for which the manufacturer was entitled to recover treble damages under section 7. *Lawlor v. Loewe*, 209 F., 725. 5—404

8. **Members of Are Bound to Know Constitutions of Their Societies.**—Members of unions and associations are bound to know the constitutions of their societies; and, on the evidence of this case, the jury might well find that the defendants who were members of labor unions knew how the words of the constitutions of such unions had been construed in the act. *Lawlor v. Loewe*, 235 U. S., 535. 5—424

9. **United Mine Workers of America an Unlawful Organization.**—The United Mine Workers of America is an unlawful organization because of its principles as set forth in its constitutions, obligations of its members, and rules which (1) require its members to surrender their individual freedom of action; (2) seek to require in practical effect all mine workers to become members, whether desirous of doing so or not; (3) to

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regards that limit to have been established as three years by the policy of the law, if not by statute, by analogy. *Ib.*

4—801

5. **Same—Statute Begins to Run as Respects Each Specific Act, Upon Date of Its Commission.**—The running of the three years' limitation prescribed by Revised Statute, section 1044, for criminal prosecutions against proceedings to punish criminal contempts of a decree enjoining the continuance of a boycott, was not postponed until such boycott was abandoned, but such statute began to run as respects each specific act charged as a substantive offense in disobedience of the injunction upon the date of the commission of such act. *Ib.*, 58 L. Ed., 1115.

4—798

6. **Same—Criminal Contempts Not Committed in Presence of Court, Not Punishable After Three Years.**—Proceedings to punish acts not committed in the presence of the court as criminal contempts of an injunction previously granted are none the less governed by the three years' limitation of Revised Statute, section 1044, which provides that "no person shall be prosecuted, tried, or punished for any offense not capital * * * unless the indictment is found or the information is instituted within three years next after such offense shall have been committed," because such contempt proceedings may not be instituted by an indictment or information. *Ib.*

4—801

7. **Of Three Years Applies to Conspiracies Under the Sherman Law.**—Under an indictment charging the officers and agents of the N. Company with conspiring to restrain the interstate business of the N. Company's competitors, which proceeded on the theory that there was a generic conspiracy extending over 20 years against all competitors, which as the various competitors named in the indictment came into existence was directed against them specifically, a conviction could be had only for conspiring in restraint of the trade or commerce of such of the competitors named in the indictment as were in existence during the three years prior to the finding of the indictment, and there could be no conviction for conspiring against the competitors who ceased to exist more than three years prior to the finding of the indictment, or for the generic conspiracy so far as it existed prior to the three years. *Patterson v. U. S.*, 222 F., 627.

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8. **In the State of Washington an Action for Damages Under the Sherman Law Is Properly Brought Within Three Years.**—The Sherman Law, section 7, provides that any person who shall be injured in his business or property by any other person or corporation, by anything forbidden or declared to be unlawful by that act, may sue therefor and recover threefold the damages by him sustained, with costs and a reasonable

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attorney's fee. Rem. & Bal. Code, Wash., section 159, subdivision 2, requires an action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not thereafter enumerated to be brought within three years. Subdivision 6 requires an action upon a statute for a penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the State, to be brought within three years, except when the statute imposing it prescribes a different limitation. Section 165 provides that an action for relief not thereinbefore provided shall be commenced within two years. *Held*, that an action for damages under the Sherman Act is properly brought within three years, as the statute upon which recovery is predicated is penal, while the right of recovery under section 7 is private and remedial, and under any view of the provisions of section 159, the two year limitation does not apply. *Harvey v. Booth Fisheries Co.*, 228 F., 787. 6—398

See also ACTIONS AND DEFENSES, 71.

LIQUOR TRAFFIC. See COMBINATIONS, ETC., 380; COURTS, 3.

LIVE-STOCK ASSOCIATIONS AND EXCHANGES, ETC. See COMBINATIONS, ETC., 159-163, 322-331.

LUMBER. See COMBINATIONS, ETC., 88-90, 263, 264, 374, 375.

MAILS, OBSTRUCTION OF. See COMBINATIONS, ETC., 246, 248, 252.

MANDATE.

Modified as to certain companies having some of the 65 per cent contracts referred to in 226 U. S., 324, *U. S. v. Reading Co.*, 227 U. S., 158. 4—789

MANUFACTURER.

1. Sending Circulars to His Customers Requesting Them Not to sell His Products to a Particular Dealer, Is Within His Legal Rights.—The sending out by a manufacturer of circulars to wholesale dealers, who are its customers, requesting them not to sell its product to a particular dealer, on the ground that he is cutting retail prices, is within its legal rights, and can not be enjoined. *Great Atl. & Pac. Tea Co. v. Cream of Wheat Co.*, 224 F., 571. 5—868

2. Same—Selling Only to Wholesalers and Refusing to Sell to Retailers Not Unlawful.—Defendant was engaged in selling under a trade name purified wheat middlings selected by it and put up in packages. Its whole business covered less than 1 per cent of the total middlings bought and sold in the country. It decided to sell only to wholesalers, and so announced to the trade, but for a time made an exception as to a particular retailer. It afterwards decided that it would no longer sell to such retailer, and did not thereafter sell to him. *Held*, that this was not unlawful, and such retailer was not entitled to an injunction restraining defendant from

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common law, declared for Ohio by the Valentine Law, and for the United States by the Sherman Law. *U. S. Tel. Co. v. Cent. Union Tel. Co.*, 202 F., 70. 4—885

28. A "Monopoly," at common law, and under the Sherman Law, implies a control of goods or service which the public desires; and an "attempt to monopolize" is an attempt to obtain control of an industry by means which prevent others from engaging in fair competition. *U. S. v. Whiting*, 212 F., 478. 5—464
29. Same—While there can be no monopoly which is not an unreasonable restraint of trade, there may be unreasonable restraints which are not monopolies. *Ib.* 5—464
30. Same—Certain Combination Held Not Guilty of Attempting to Monopolize the Trade in Milk in Boston.—Persons engaged in the business of buying milk and selling it at retail in designated localities formed a combination whereby they agreed not to offer or pay more than a specified price for milk purchased by them for resale. It did not appear that the combination in any way enlarged their control of the business, either by forcing down the price at which they bought; so that they could undersell competitors in the selling market or otherwise. The agreement was made with the intent to wrong the public and to oppress and limit the rights of milk producers by depriving them of the higher price of milk which would have resulted from free competition. They did not dominate or control the markets in which they sold their milk purchased pursuant to the combination. *Held*, that they were not guilty of attempting to monopolize trade in milk in violation of the Sherman Law. *Ib.* 5—464
31. Usual Meaning of.—The usual meaning of "monopoly" is the acquisition of something for one's self, and while the word is used most appropriately when the whole of a given trade is acquired, the terms of section 2 of the Sherman Law make it applicable to monopolization of a part of trade. *U. S. v. Keystone Watch Case Co.*, 218 F., 516. 5—500
32. The Refusal by an Association of Bill Posters to Accept Advertising from Persons Patronizing Competitors, Whereby a Monopoly Is Established, Is Unlawful.—Where, by an association of bill posters, who refused to accept advertising from persons patronizing competitors, competition was practically stifled and a monopoly established, such monopoly is in violation of the Sherman Law, though the monopoly produced a general improvement in the bill-posting business. *U. S. v. Associated Bill Posters*, 235 F., 541. 6—648
33. Indictment for Engaging in, Need Not Set Out Overt Act.—An indictment for combining and engaging in a monopoly in restraint of interstate trade and commerce need not set out any overt act, as the combination or contract in any form in

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restraint of trade constitutes the offense under the statute, and it is only essential to charge the combination or contract. *U. S. v. Cowell*, 243 F., 731. 6—1005

34. Same—Indictment for Engaging in Between Specified Dates Sufficiently Alleges Time of Offense.—An indictment for combining and engaging in a monopoly in restraint of interstate commerce sufficiently alleges the time of the offense by alleging that the parties were engaged in the unlawful combination or contract between specified dates, as the offense is a continuing one and the parties are transgressing the statute while engaged in the operation of the design or in carrying it into effect. *Ib.* 6—1005
35. Same—Indictment for Engaging in, Must Give Particulars.—An indictment for combining and engaging in a monopoly in restraint of interstate trade and commerce must give particulars, and not rely simply on the words of the statute. *Ib.* 6—1006
36. Unfair Acts Which Are Part of Attempt to Monopolize, Are a Subject for Damages.—Where a company attempted to monopolize the manufacture and sale of coated wire nails, and as part of its plan engaged in various illegal and unfair practices, such as hindering its competitors from obtaining raw materials and the necessary machines, bribing their factory employees to disclose factory conditions and to send out defective goods, and bribing office employees to disclose the names of their customers and their contracts, and then selling to such customers below cost, a competitor attacked in these ways had a right of action for damages, under the Sherman Law, since, while no action lies under that act for unfair practices, damages are recoverable thereunder for monopolizing, or attempting to monopolize, and acts which are a part of the monopolizing, or attempting to monopolize, are a subject for damages. *American Steel Co. v. American Steel & Wire Co.*, 244 F., 302. 6—1021
37. Combination of Corporations Selling Machinery Not Competing, but Supplementing, Not in Restraint of Trade.—Combinations of several corporations, each selling or leasing machinery intended for different operations, not competing, but supplementing each other, does not ordinarily constitute a monopoly in restraint of trade. *U. S. v. Winslow*, 195 F., 591. 5—190
38. Contract Between Company and Labor Union, Concerning Wages, etc., Not Objectionable as Tending to Monopoly.—A contract between a manufacturing corporation and a labor union, by which the corporation thereafter agreed to pay union wages and to comply with the union hours of labor and conditions of employment, but which contained no direct provision binding the corporation not to employ non-union men, was

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and takes no part in the management of its business, is not subject to a suit for injunction under the Sherman Law, because the corporation may be a party to a contract or combination to restrain or monopolize interstate commerce. *Ib.* 4—345

10. Parties in Equity—Unincorporated Association.—In a suit in equity to restrain an alleged unlawful combination acting as an unincorporated association it is sufficient that the association, together with a large number of its members, as individuals and officers of the association, are made parties defendant. *U. S. v. Coal Dealers' Assn. of Cal.*, 85 F., 252. 1—749

11. Indictment—Joinder of Defendants.—In an indictment under the Sherman Law, the offenses thereunder being made misdemeanors, all who aid in their commission may be personally participate in committing the same, may be joined as defendants, although their acts may have been separate. *U. S. v. MacAndrews & Forbes Co.*, 149 F., 824. 3—81
separate. *U. S. v. MacAndrews & Forbes Co.*, 149 F., 824.

12. Action for Damages—Improper Joinder of Members of Separate Combinations.—National associations of manufacturers of proprietary medicines, wholesale druggists and retail druggists, respectively, entered into a tripartite agreement for the purpose of maintaining prices of proprietary medicines, which constituted a combination and conspiracy in restraint of interstate commerce, in violation of the Sherman Law, and adopted definite plans and methods for carrying it into effect by preventing retailers who cut prices from obtaining such medicines. Subsequently, to forward the same general purpose, the retailers' association proposed further plans and methods far more drastic, under which such price cutters were prevented from obtaining any druggists' supplies. These plans were not adopted by the other associations, but were assented to by some of their members individually upon direct appeal but not by others. *Held*, That the two combinations were separate and distinct, and that a party to the first, who did not become a party to the second, was not bound thereby, and could not be joined as a defendant in an action for damages under the statute with other defendants, who were parties only to the second agreement, nor was the latter admissible in evidence against him. *Jayne v. Loder*, 149 F., 31. 3—80

13. Ends of Justice Require Necessary Parties to Be Brought in.—The ends of justice require, within the true meaning of the Sherman Law, that every necessary party within reach of the process of the court, every party who has an interest in the controversy and who ought to be made a party to the suit in order that the court may finally adjudicate the

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whole matter, should be brought in. *U. S. v. Standard Oil Co.*, 152 F., 295. 3—181

14. **Same—All Parties, Though Not Necessary to a Restraining Decree, Should Be Brought in.**—The Sherman Law prohibits conspiracies in restraint of trade, and section 4 confers on the several Federal circuit courts jurisdiction to restrain violations of its provisions; section 5 providing that, whenever it shall appear to the court before which any proceeding under section 4 is pending that the ends of justice require that other parties should be brought in, the court may cause them to be summoned, whether they reside in the district in which the court is held or not. A bill alleged that the Standard Oil Company of New Jersey, a holding corporation, and 7 individual defendants, and about 70 other defendants, called "subsidiary corporations," had formed and were executing a conspiracy to restrain and monopolize commerce in petroleum and its products among the States and Territories and with foreign nations; that, pursuant thereto, the individual defendants had caused the control of all the subsidiary corporations and the ownership of a majority of the stock of many of them to be vested in the Standard Oil Company of New Jersey, while the subsidiary corporations were the producers, refiners, traders, and operators, by means of which the restraint and monopoly was effected and the profits obtained; that the individual defendants owned a majority of the stock of and controlled the holding corporation, and through it the subsidiary corporations; that two of the subsidiary corporations, one a corporation of Missouri within the district, in combination with the other defendants, controlled and monopolized the railroad lubricating oil business of the United States; that the defendants had divided the territory of the United States into districts so that certain defendants only were permitted to sell therein; and that the Missouri corporation was a party to this conspiracy. *Held*, that the ends of justice required that all of the defendants, regardless of their residence, be made parties to such proceeding, though they were not necessary parties to a decree merely restraining the Missouri corporation from further continuing its wrongful acts. *Id.* 3—181

15. **Same—Practice under Section 5.**—The approved practice under the Sherman Law is to make all the conspirators, both resident and non-resident, parties defendant to the bill, to set forth therein the existence and history of the conspiracy and the connection of each defendant therewith, and immediately upon its filing to present a petition to the court in which the places where the non-resident defendants can be served with process are disclosed, and to pray therein

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den or declared unlawful by the act, may sue therefor in any circuit court in the district in which defendant resides or is found, merely removes the existing limitations on the venue of actions between diverse citizens, and permits plaintiff to sue defendant wherever he can serve defendant with process good where executed. *Thorburn v. Gates*, 225 F., 615. 6—200

99. Prescribes the Remedies for Its Violation.—The Sherman Law prescribes the remedies for its violation, civil and criminal, at law and in equity, and under its provisions injunctive relief can be given only at suit of the Government. Nor can such relief be granted under section 340 of the General Business Law of New York (Consol. Laws 1909, c. 20) against a combination in restraint of competition in trade in violation of its provisions except at suit of the State. *Irving v. Neal et al.*, 209 F., 476. 5—393

100. Not Repealed by the Judicial Code.—The Sherman Law, providing that any person injured by reason of any violation thereof, may sue in any circuit court in the district in which the defendant resides or is found, was not repealed by the Judicial Code, which, in section 289 abolishes the circuit courts, in section 24, paragraph 23, gives district courts jurisdiction of all suits under any law to protect trade against restraints and monopolies, in section 291 provides that when, under any law not embraced within that act, any reference is made to, or any power or duty is conferred or imposed upon, the circuit courts, such reference shall be deemed to refer to and to confer such power and impose such duty upon the district courts, and in section 297 provides that all acts, in so far as they are embraced within or superseded by that act, are thereby repealed, since the only radical change made by the Judicial Code was the abolition of the circuit courts, the purpose in other respects being to codify the existing law; and hence Judicial Code, section 51, requiring certain actions to be brought in the district of defendant's residence, does not apply to suits for violations of the Sherman Law. *Wogan Bros. v. American Sugar Ref. Co.*, 215 F., 273. 5—467

101. The Patent Laws Not Repealed by the Sherman Law.—The patent laws, which preserve to a patentee the exclusive right for a limited time of making and vending the patented article, are not repealed by the Sherman Law, and the patentee by virtue of his patent may impose reasonable conditions of bailment and sale. *U. S. v. Motion Picture Patents Co.*, 225 F., 803. 6—209

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Section 1.

- 102. Conspiracy in Restraint of Interstate Commerce.**—A combination by railroad employees to prevent all the railroads coming into a large city engaged in carrying the United States mails and in interstate commerce from carrying freight and passengers, hauling cars, and securing the services of persons other than strikers, and to induce persons to leave the service of such railroads, is within section 1 of the Sherman Law, which provides that every contract, combination in the form of trust or otherwise, "or conspiracy in restraint of trade or commerce" among the States is illegal. *U. S. v. Elliott*, 64 F., 27. 1—311
- 103. Same.**—The Sherman Law, section 1, is not aimed at capital merely and combinations of a contractual nature, which by force of the title, "An act to protect trade and commerce against unlawful restraints and monopolies," are limited to such as the courts have declared unlawful. *U. S. v. Debs*, 64 F., 724. 1—322
- 104. Same.**—The term "conspiracy" in section 1 of the Sherman Law is used in its well-settled legal meaning, so that any restraint of interstate trade or commerce, if accomplished by conspiracy, is unlawful. *Ib.* 1—352
- 105. What Contracts, Combinations, or Conspiracies Violate the Sherman Law.**—Every contract, combination, or conspiracy the necessary effect of which is to stifle or to directly and substantially restrict competition in commerce among the States is in restraint of interstate commerce, and violates section 1 of the Sherman Law. *Whitwell v. Continental Tobacco Co.*, 125 F., 454. 2—271
- 106. What Acts, Contracts, and Combinations Do Not Violate the Sherman Law.**—Acts, contracts, and combinations which promote, or only incidentally or indirectly restrict, competition in commerce among the States, while their main purpose and chief effect are to foster the trade and increase the business of those who make and operate them, are not in restraint of interstate commerce or violative of section 1 of the Sherman Law. *Ib.* 2—276
- 107. Section 1 of the Sherman Law makes a distinction between a contract and a combination or conspiracy in restraint of trade.** *Rice v. Standard Oil Co.*, 134 F., 464. 2—633
- 108. Contract for Sale of Goods by Member of Combination.**—The Sherman Law does not invalidate or prevent a recovery for the breach of a collateral contract for the manufacture and sale of goods by a member of a combination formed for the purpose of restraining interstate trade in such goods. *Hadley Dean Plate Glass Co. v. Highland Glass Co.*, 143 F., 242. 2—995

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109. **Section 1 Includes Not Only Voluntary, but also Involuntary Restraints.**—Section 1 of the Sherman Law is not confined to voluntary restraints but includes involuntary restraints, as where persons not engaged in interstate commerce conspire to compel action by others or create artificial conditions, which necessarily affect and restrain such commerce. *U. S. v. Patten*, 226 U. S., 541. 4—757
110. **The Phrase "Engage in Such Combination or Conspiracy," as Used in Section 1, Includes All Persons Who Engage in the Conspiracy.**—The phrase "engage in such combination or conspiracy," in section 1 of the Sherman Law, is used in a broad sense, and includes not only such persons as initiate a conspiracy, but also those who afterwards engage therein; and hence an indictment charging that defendants were engaged in a conspiracy among themselves to control and monopolize interstate commerce in the manufacture and sale of coaster brakes among the several States, followed by an allegation of overt acts tending to effectuate the conspiracy, was not defective for failure to charge directly the formation and existence of the conspiracy, the words "engage in," as so used, signifying to embark in, take part in, or enlist in, meaning substantially the same thing as to conspire. *U. S. v. New Departure Mfg. Co.*, 204 F., 111. 5—151
111. **Same—Extent of Interstate Trade Conspired Against Is Immaterial, a Single Shipment Being Covered by the Law.**—Under the Sherman Law, section 1, relative to conspiracies in restraint of interstate commerce, the extent of the interstate trade or commerce conspired against is immaterial, and a conspiracy between the officers and agents of one competitor on its behalf to restrain a single interstate sale or shipment by another competitor is covered by it. *Patterson v. U. S.*, 222 F., 618. 5—90
112. **Under Section 1, Defendants Who Conspire to Restrain Trade Between U. S. and Foreign Country Are Guilty, Though No Overt Acts Be Committed.**—Under section 1 of the Sherman Law, declaring that every conspiracy in restraint of trade or commerce among the several States or with foreign nations is illegal, defendants, who conspired to restrain trade between the United States and foreign nations, are guilty, though no overt acts were committed; such conspiracy being governed by the rules applicable to common-law conspiracy, which made the unlawful conspiring the gist of the offense. *U. S. v. Rintelen*, 233 F., 794. 6—526
- See also* INDICTMENTS, 5.

Section 2.

113. **Monopolies.**—To constitute the offense of "monopolizing, or attempting to monopolize," trade or commerce among the

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STOCK QUOTATIONS. See COMBINATIONS, 332-336.

STRIKE.

1. **Workingmen Have Right to Strike Peaceably, but Not to Threaten Owners, etc.**—Workingmen have the right to unite to protect themselves, and to strike peaceably for grievances, but not to threaten owners, builders, and architects that their contracts will be held up if they, or any of their sub-contractors, use another employer's products. *Irving v. Joint Council of Carpenters, etc.*, 180 F., 900. 5—383
2. **A strike is merely an agreement by all the members of a union not to do business with an employer, in order to obtain shorter hours, higher wages, or some other legitimate end.** *U. S. v. King*, 229 F., 279. 6—419
3. **Interference by Violence, by Members of Labor Union on a Strike, With Business of Their Employer, Held Unlawful and Enjoined.**—Section 20 of the Clayton Law declares that no restraining order or injunction shall be granted in any case between an employer and employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning the terms or conditions of employment, unless necessary to prevent irreparable injury to property or property rights, and that no such restraining order shall prohibit any person or persons, whether singly or in concert, from terminating any employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceable means to do so. Employees of complainant, a ship company, engaged as a common carrier, which also carried the mails, struck, and defendants, composing the union of which they were members, picketed the wharves of complainant and intimidated other laborers from accepting complainant's offers of employment. Defendants threw rocks on the wharves, and in other ways interfered by violence with complainant's business and access to its ships. Interstate Commerce Act of Feb. 4, 1887, section 3, (24 Stat., 380), and section 10, as amended by the Act of March 2, 1889, section 2 (25 Stat., 857), respectively declare that every common carrier subject to the provisions of the act shall afford reasonable facilities for the exchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines, and that any common carrier which shall willfully omit to do any act or thing required to be done shall be guilty of a misdemeanor. *Held* that, though defendants were authorized under the statute to persuade third persons to decline complainant's offers of employment, and to refuse to deliver goods to complainant, or to patronize it, their interference with complainant's transportation business by violence was unlawful and

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- will be enjoined, as it would not only expose complainant to loss, but to prosecution for violations of law. *Alaska S. S. Co. v. Inter. Longshoremen's Ass'n*, 236 F., 970. 6—682
4. **Same—Labor Union, Conducting Strike, Liable for Unlawful Acts of Members and Others Associating With Strikers.**—A trade union, conducting a strike, is liable for the unlawful acts of members and others associating themselves with the strikers, unless such acts be disavowed, and, in the case of members, the offenders be disciplined or expelled. *Ib.* 6—684
5. **Strikers Have a Right to Picket and to Persuade, but Not Coerce, Others Seeking Employment Not to Do So.**—Striking employees have a lawful right to place pickets in the streets leading to their employer's plant, to ascertain who are continuing or seeking employment there, and to persuade, but not to coerce, them not to do so, and the maintenance of such pickets, and attempts to persuade employees to cease working, can not be enjoined. *Tri-City Trades Council v. American Steel Foundries*, 238 F., 730. 6—916
6. **Same—Exercise of Right to Strike, by Employees, Not an Unlawful Conspiracy.**—The exercise by employees of their right to combine and strike to obtain better wages, though it interferes with the employer's business, is not an unlawful conspiracy, which entitles the employer to an injunction restraining acts in furtherance thereof which are in themselves lawful. *Ib.* 6—918
7. **Same—Commission of Unlawful Acts Does Not Taint Purpose With Unlawfulness.**—The commission of unlawful acts to effectuate that purpose does not taint the purpose itself with unlawfulness, so as to justify an injunction against lawful as well as unlawful acts in furtherance thereof. *Ib.* 6—918
8. **Same—Does Not Fully Terminate Relationship Between Strikers and Their Employer.**—A labor union, of which former employees engaged in a strike were members, is not a mere intermeddler, whose interference with other employees may be restrained, when only lawful means are used, since a strike does not fully terminate the relationship between the parties, but creates a relationship, neither that of general employer and employee, nor that the employers and employees seeking work from them as strangers. *Ib.* 6—919
9. **In Case of, Test of Lawfulness of Acts of Strikers.**—Under the Clayton Law, the test whether an act is lawful is the question whether it would be lawful if no strike existed; and no action having in it the element of intimidation, coercion, or abuse, physical or verbal, or of invasion of rights of privacy, nor any act or speech which a fair-minded man may reasonably judge to be intended to convey insult, threat, or annoyance to another, or to work abuse upon him, is lawful. *Stephens v. Ohio State Tel. Co.*, 240 Fed., 776. 6—937

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TRADE-MARKS.

1. **Purpose of, Is to Protect Owner in His Property, and the Public from Deception.**—The protection given by law to trade-marks has for its object the protection of the owner in his property, and the protection of the public from deception, by reason of a misleading claim that the article bearing the trade-mark is the article manufactured by the owner of the trade-mark, when in fact it is but a substitute. *Coca-Cola Co. v. Butler & Sons*, 229 F., 229. 6—409
2. **Same—The Use of Any Simulation of, Likely to Deceive the Public, Will Be Enjoined.**—The use of any simulation of a trade-mark which is likely to induce common purchasers, exercising ordinary care, to buy the article to which the trade-mark is affixed, thereby indicating that it is the product of the owner of the trade-mark, is unlawful, and will be enjoined. *Ib.* 6—409

TRADING STAMPS.

1. **Restricting to Subscribers, of Redemption Privileges of Trading Stamps, Not a Violation of the Clayton Act.**—The Clayton Law, prohibiting the making of a contract fixing the price for merchandise on condition that the lessee or purchaser shall not use or deal in the merchandise of a competitor, if the effect of the contract is to substantially lessen competition or tend to create a monopoly, does not prohibit a trading-stamp concern from restricting redemption privileges to subscribers under contract with it binding such customers to distribute stamps only to customers. *Sperry & Hutchinson Co. v. Fenster*, 219 F., 756. 5—508
2. **Same—Right to Redeem Stamps a Property Right, the Wrongful Use of Which May Be Enjoined by Concern Issuing Them.**—Where complainant, a trading-stamp concern issued redeemable stamps only to subscribers under a contract by which the latter agreed to distribute the stamps only to customers, the right to redeem the stamps was a property right transferable by possession, while the license to use them for advertising purposes was not transferable without compensation to complainant, and hence complainant was entitled to enjoin the use of its stamps for advertising purposes by persons who had obtained them from subscribers in violation of the restriction. *Ib.* 5—509

TRANSPORTATION. See CARRIERS; AND STATUTES, 130.

TREBLE DAMAGES. See ACTIONS AND DEFENSES, 58-84; STATUTES, 132-141.

TRIAL.

1. **Evidence—Court to Instruct Jury as to Effect of, When Against One Conspirator Only.**—In a trial of a number of defendants for conspiracy, where items of evidence are necessarily admitted which at the time are competent against one defendant

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providing that no person shall be compelled in a criminal case to be a witness against himself. *Ib.* 2—106

3. **Same—Question of Incrimination for Judge to Decide.**—Where a witness claims that the answer to a question will tend to incriminate him, it is not for the witness, but for the judge, to decide whether, under all the circumstances, such might be the effect, and the witness entitled to the privilege of silence. *Ib.* 2—109

4. **Same.**—Where a person has already been indicted for an offense about which he is to be examined as a witness, and the questions asked him tend to connect him with such offense, the testimony sought is within the inhibition of the Fifth Amendment to the Constitution, providing that no person shall be compelled in any criminal case to be a witness against himself. *Ib.* 2—110

5. **Same—Assurance of Safety—Relinquishment of Privilege—Can Not Be Compelled.**—Where a witness before a grand jury declines to answer certain questions, and is taken before the judge, who assures him that he can safely answer, as his testimony can not be used against him, he is not compelled by such assurance to relinquish his constitutional privilege where the answer may tend to criminate him. *Ib.* 2—110

6. **Same—Contempt—Commitment—Habeas Corpus—Relief.**—Where a witness is committed for contempt in refusing to answer all of a series of questions, for the reason that the answers would tend to criminate him, and some of the answers would have that tendency, he should not be denied relief on habeas corpus because some of the questions might be safely answered. *Ib.* 2—110

7. **Immunity of Witnesses—Sherman Law—Inquisitions.**—An inquisition before a grand jury to determine the existence of supposed violations of the Sherman Law was a "proceeding" within act of Congress of February 19, 1903 (32 Stat., 848), providing that no person shall be prosecuted or subjected to any penalty for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence in any "proceeding" under several statutes mentioned, including such Sherman Law. *In re Hale*, 139 F., 406. 2—804

8. **Same—Unreasonable Searches—Rights of an Agent—Subpoena Duces Tecum.**—A subpoena duces tecum commanding the secretary and treasurer of a corporation supposed to have violated the Sherman Law to testify and give evidence before the grand jury, and to bring with him and produce numerous agreements, letters, telegrams, reports, and other writings, described generally, in effect including all the correspondence and documents of his corporation originating since the

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- date of its organization, to which nineteen other named corporations or persons were parties, for the purpose of enabling the district attorney to establish a violation of such act on the part of the witness' principal, constituted an unreasonable search and seizure of papers, prohibited by the Fourth Amendment to the Constitution. *Ib.* 2—816
9. Same—Habeas Corpus.—Where a subpoena duces tecum was directed to be issued by a circuit judge, and the witness was committed for contempt for failure to obey the same, he would not be discharged on habeas corpus by another judge of the same court, though the latter was of the opinion that the subpoena authorized an unconstitutional search and seizure of private papers. *Ib.* 2—816
10. Protection of Witness—Act of February 25, 1903 (32 Stat., 905).—The examination of witnesses before a grand jury concerning an alleged violation of the Sherman Law is a "proceeding" within the meaning of the proviso to the act of February 25, 1903 (32 Stat., 903), that no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he may testify or produce evidence in any proceeding, suit, or prosecution under certain named statutes, of which the Sherman Law is one. The word "proceeding" should receive as wide a construction as is necessary to protect the witness in his disclosures. *Hale v. Henkel*, 201 U. S., 43. 2—874
11. The constitutional right of a witness to claim his privilege against self-incrimination, afforded by the Fifth Amendment, when examined concerning an alleged violation of the Sherman Law, is taken away by the proviso to the act of February 25, 1903 (32 Stat., 904), that no person shall be prosecuted or be subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he may testify or produce evidence in any proceeding, suit, or prosecution under certain named statutes, of which the Sherman Law is one, which furnishes a sufficient immunity from prosecution to satisfy the constitutional guaranty, although it may not afford immunity from prosecution in the State courts for the offense disclosed. [See also *Nelson v. United States*, 201 U. S., 92 (2—920).] *Ib.* 2—897
12. The interdiction of the Fifth Amendment operates only where a witness is asked to incriminate himself, and does not apply if the criminality is taken away. A witness is not excused from testifying before a grand jury under a statute which provides for immunity, because he may not be able, if subsequently indicted, to procure the evidence necessary to maintain his plea. The law takes no account of the practical

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providing that no person shall be compelled in a criminal case to be a witness against himself. *Ib.* 2—109

3. Same—Question of Incrimination for Judge to Decide.—Where a witness claims that the answer to a question will tend to incriminate him, it is not for the witness, but for the judge, to decide whether, under all the circumstances, such might be the effect, and the witness entitled to the privilege of silence. *Ib.* 2—109

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Appeals of the District of Columbia punishing for contempt, it may grant a writ of certiorari to review the same. *Gompers v. U. S.*, 233 U. S., 603. 4—795

2. **Of Error, Issued by Supreme Court, When Should Go to Circuit Court of Appeals.**—For review in the Supreme Court of a final judgment of the circuit court of appeals directing that an action be dismissed, the writ of error should go to that court; and its efficacy is not impaired by the circumstances that, before the allowance of the writ by that court, the trial court, obeying the mandate, has entered judgment of dismissal and has adjourned for the term before any application has been made to recall its action. *Thomsen v. Cayser*, 248 U. S., 82. 6—724

3. **Of Prohibition, Proper Remedy to Prevent District Judge from Entering, Without Authority, Decree.**—The district judge having refused to organize a court under the Expedition Act to determine the form of decree to be entered under the mandate of the Supreme Court, the latter court will issue its writ of prohibition directed to the district judge against entering a decree. *Ex parte U. S., Petitioner*, 226 U. S., 425. 4—511

